Supreme Court of the United States

No. 227.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

GEORGE JONAS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 30, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 445.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

GEORGE JONAS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, district of Louisiana.

UNITED STATES
vs.
GEORGE JONAS. } No. 6265.

Petition.—Filed Sept. 14th, 1870.

To the hon. the judges of the circuit court of the United States for fifth circuit & district of Louisiana:

The petition of the United States, with respect, shows that George Jonas, of New Orleans, is justly indebted to them in the sum of nine thousand three hundred & fifty-three $\frac{21}{100}$ dollars, $9,353.21, with interest, as hereinafter claimed, for this: that, on the 31st day of May, 1870, petitioners, being the owners of the following described property, viz: Three certain lots of ground, together with the buildings & improvements thereon, and the rights, ways, privileges, & appurtenances thereunto belonging, or in any wise appertaining, situate in the first district of New Orleans, the square bounded by Gasquet, Canal, Marias, & Villere streets, designated by Nos. one, two, & three, on a plan drawn by
2 J. Pilie, surveyor, on the 3d May, 1839, deposited in the office of L. Heermann, late a notary in said city; lots Nos. one & two measure each twenty-one feet three inches & six lines front on Canal street, by a depth of one hundred & seventeen feet ten inches & five lines between parallel lines, lot No. one forming the corner of Canal & Marias streets; and lot No. three measures twenty-one feet three inches & six lines front on Canal street by 127 feet 10 inches & 5 lines in depth between parallel lines, American measure, together with the use of an alley opening on Marias street in the rear of said lots, measuring ten feet wide and common to said lots, together with all & singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion & reversions, remainder & remainders, rents, issues, & profits thereof; and also all the estate, right, title, interest, property, possession, claim, & demand whatsoever, as well in law as in equity of the United States of America of, in, & to the same and every part and parcel thereof, with the appurtenances;
did, after due public advertisement, cause the same to be offered for sale at public auction in the city of New Orleans, by J. B. Walton, a duly licensed auctioneer in & for the said city, and parish of Orleans,
3 on the following terms & conditions: one-third of the price payable in cash, in United States Treasury notes; the remainder in the notes of the purchaser to his own order and by him endorsed, payable at one & two years in equal amounts, bearing interest at eight per cent. per annum from date until paid, and special mortgage & vendor's privilege upon the property, until final payment. The mortgage to embrace the clause of five per cent. for attorney's fees in case of suit to recover payment of the notes, or any part thereof should they not be punctually paid at maturity. The buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government, and to be kept insured until final payment, and the policies to be transferred to the vendor. Act of sale before A. Hero, jr., notary public, at the expense of the purchaser.

Petitioners aver that the said George Jonas bid at the said auction the sum of thirty thousand dollars for the said property, and that being

the highest and last bid, the property was accordingly adjudicated to him for the said price and sum of thirty thousand dollars, as will more fully appear by reference to the proces-verbal of adjudication of the auctioneer herewith filed as part of this petition, & marked Ex-
4 hibit A; that, thereafter, to wit, on the seventh day of July, 1870, petitioners tendered to said George Jonas a good and valid title to the said property, by them duly executed, and called upon him to accept the same & take the property, and comply with the terms & conditions of the sale, all of which he refused to do; whereupon he was duly put in default, as will more fully & at large appear from the certified copy of notarial act, marked Exhibit B, herewith filed & prayed to be taken as part of this petition.

And further, petitioners aver that, afterwards, to wit, on the sixth day of August, 1870, after due & customary public notices, petitioners caused the said property to be again offered for sale at auction, at the city of New Orleans, upon the same terms & conditions for, and on account, and at the risk of the said George Jonas, by the said J. B. Walton, auctioneer; that, at the said sale, I. G. Duffield bid the sum of twenty-one thousand five hundred dollars for said property, and he being the highest and last bidder, the same was adjudicated to him for the said sum, being less by eight thousand five hundred dollars than the price for which the said property had been adjudicated to the said George Jonas as aforesaid.

5 And further, petitioners aver that, by reason of the refusal of the said George Jonas to comply with the terms of the sale of said property so adjudicated to him, they have suffered loss & damage—

By deficiency in price on the 2nd sale of.....	$8,500 00
By costs & charges as p'r auctioneer's bill, Ex. C.....	828 21
" " " " notary as p'r bill, Ex. D.....	25 00
Amounting in the aggregate to said sum of.....	$9,353 21

Petitioners aver that they have amicably demanded payment of said sum of said Jonas, and that he refused to pay the same.

The premises considered, petitioners pray that the said George Jonas may be cited, and, after due proceedings had, that he be condemned to pay to petitioners the said sum of nine thousand three hundred and fifty-three $\frac{21}{100}$ dollars, with interest thereon at the rate of eight per cent. per annum from 7th day of July, 1870, till paid, and costs of suit; and further they pray for all general & equitable relief.

A. B. LONG, *U. S. Att'y*,
Per J. W. GURLEY, *Ass't U. S. Att'y.*

EXHIBIT A.—*Filed Sept. 14th*, 1870.

Sale by auction, by J. B. Walton, auctioneer, by order of the Solicitor of the Treasury and for account of the United States Government.

6 I, James B. Walton, a duly licensed auctioneer in & for the parish of Orleans & city of New Orleans, do hereby certify that, by virtue & in pursuance of an order of the Solicitor of the Treasury, and after the regular & legal advertisements had been published in the New Orleans Republican, the official journal of the parish of Orleans, published in this city, on the 27th day of February; the 6th, 13th, 20th, 27th days of March; the 3d, 10th, 17th, & 24th days of April; the 1st, 3d, 8 & 15th days of May, and daily from the 15th of May until the 31st day of

May, 1870, inclusive, and in French in the New Orleans Bee, (a newspaper published in the French & English languages,) in this city, on the 1st, 6th, 13th, 20th, & 27th days of March, & on the 3rd, 10, 17, & 24th days of April, 1870, [I did, on Tuesday, the 31st day of May, 1870,] at 12 o'clock m., at the Saint Charles Auction Exchange, in this city, proceed to sell by public auction, to the last & highest bidder, for account of the United States Government, the following described property, to wit:

Three lots of ground, with the buildings and improvements thereon, corner of Canal & Marais streets, in the first district of this city, in the square bounded by Canal, Gasquet, Marais, & Villeré streets, designated by the Nos. 1, 2, & 3, on a plan drawn by Joseph Pilié, surveyor, on the 3d day of May, 1839, deposited in the office of Lucien
7 Hermann, late a notary in this city, measuring each 21 feet 3 inches 6 lines front on Canal street, by a depth, each, between parallel lines of 127 feet 10 inches 5 lines, all American measure, lot No. 1 forming the corner of Canal & Marais streets, together with the use of an alley in the rear of said lots, opening on Marais street, common to said lots, & being ten feet wide.

The improvements on these lots consist of a two-story and attic brick residence, & two-story brick back buildings, etc., known as the late residence of Tho's P. May, esq.

To George Jonas, he being the last highest bidder, for the price and sum of thirty thousand dollars, ($30,000.00.)

TERMS & CONDITIONS.—One-third cash in U. S. Treasury notes; the remainder in the notes of the purchaser to his own order & by him endorsed, payable at one and two years, in equal amounts, bearing interest at eight per cent. per annum from date until paid, & special mortgage & vendor's privilege upon the property, until final payment. The mortgage to embrace the clause of five per cent. for attorney's fees, in case of suit to recover payment of the notes or any part thereof, should they not be punctually paid at maturity. The buildings to be insured by the purchaser to the satisfaction of the agent of the United States
8 Government, and to be kept insured until final payment, & the policies to be transferred to the vendor. Act of sale before A. Hero, jr., notary public, at the expense of the purchaser.

J. B. WALTON,
Auctioneer.

EXHIBIT B.—*Filed Sept. 14th*, 1870.

STATE OF LOUISIANNA,
City of New Orleans, Parish of Orleans:

Be it known that, on this second day of July, in the year of our Lord one thousand eight hundred and seventy, I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, in the presence of George Cenas and Paul A. Conaud, witnesses of lawful age, domiciliated in this city, at the hour of a quarter before one o'clock p. m. of said day, at the request of A. B. Long, esq., attorney of the United States for the district of Louisiana, did deliver to George Jonas, of this city, at his office in this city, a certain letter which is written in the words and figures following, viz:

NEW ORLEANS, *July 2nd*, 1870.

GEORGE JONAS, Esq.:

9 SIR: At a public sale made by James B. Walton, a duly licensed auctioneer of this city, on the 31st May, 1870, by order of the Solicitor of the Treasury, for the account of the United States Government, the following-described property was adjudicated to you, viz:

Three lots of ground with the buildings and improvements thereon, and all rights and privileges thereto belonging, situate in the first district of this city, in the square bounded by Gasquet, Canal, Marais, and Villeré streets, designated by the numbers one, two, and three, on a plan drawn by J. Pilié, surveyor, dated 3d May, 1839, and deposited in the office of L. Hermann, late a notary in this city. Lots Nos. one and two measure each twenty-one feet, three inches, and six lines front on Canal street, by a depth of one hundred and seventeen feet, ten inches, and five lines, between parallel lines, lot No. one forming the corner of Canal and Marais streets; and lot No. 3 measures twenty-one feet, three inches, and six lines front on Canal street, by one hundred and twenty-seven feet, ten inches, and five lines in depth, between parallel lines, American measure, together with the use of an alley, opening on Marais street, ten feet wide, common to said lots. Same having been so adjudicated unto you as the last and highest bidder thereon, for the

10 price and sum of thirty thousand dollars, payable one-third cash in United States Treasury notes; the remainder in your notes, to your own order, and by you endorsed, payable at one and two years, in equal amounts, with interest at the rate of eight per cent. per annum from date until final payment, and secured by a special mortgage, with vendor's privilege, upon said property, until final payment; the mortgage to embrace the clause of five per cent. attorney's fees, in case of suit to recover payment of said notes, or any part thereof, should they not be punctually paid at maturity; and the buildings to be insured by you to the satisfaction of the agent of the United States Government, and to be kept insured until final payment, and the policies transferred to the vendor.

In confirmation of said sale the act of sale thereof has been prepared and executed on behalf of the United States Government by the Solicitor of the Treasury, and nothing remains to give and transfer to you a good, valid, and unencumbered title to said property but the acceptance by you of such sale, your signature to said act in token thereof, and of granting said mortgage, and your payment or furnishing of the money and notes forming the consideration.

Now you will please take notice, that I demand from you the

11 execution of said act of sale on your part, and the payment or furnishing of said money and notes forming said consideration on or before Thursday next, the 7th July, inst., at 12 o'clock at noon, at the office of Andrew Hero, j'r, No. 17 Commercial place, in this city, the notary before whom said sale is conditioned to be passed, where and when I will be present to receive from you said consideration; and should you fail to comply with this demand and in every respect conform to said sale at or before the time specified, you will be placed in default, and necessary legal measures will be taken against you for all loss or damage that may be sustained in consequence of your non-compliance.

I am, sir, very respectfully, your ob't serv't,

(Signed) A. B. LONG, *U. S. Atty.*

In faith whereof I have hereto signed my name, together with said witnesses, on the day and date aforesaid.

(Signed) GEO. CENAS.
P. A. CONAUD.
ANDREW HERO, J'R, *Not. Pub.*

And now, to wit, at the hour of six o'clock p. m. of Thursday, the seventh day of July, eighteen hundred and seventy, I, Andrew Hero, j'r, notary public aforesaid, do hereby declare and certify that, at no time in said Thursday, the seventh day of July, 1870, nor at any time or day since said second day of July, 1870, did said George Jonas
12 appear, either in person or by agent or attorney, at my office in reference to the above-mentioned act of sale, or for the purpose of complying or proffering to comply with the demand contained in the aforesaid letter, or the terms and conditions of said public sale.

And I further certify that A. B. Long, esq'r, attorney of the United States of the district of Louisiana, was present and in attendance at my office, No. 17 Commercial place, from the hour of half past eleven o'clock a. m. until half past twelve o'clock p. m., of Thursday, agreeably to the said letter.

And at this hour the said United States attorney, A. B. Long, being again present at my office, required and requested me, notary, to record and deposit among my notarial archives, to serve and avail as occasion shall or may require, the act of sale of the within-described property, unto said George Jonas executed by the Solicitor of the Treasury of the United States, and referred to in the above letter; and also the requisite certificate of mortgage from the recorder of mortgages of this parish, and the proces-verbal of said auctioneer of the aforesaid sale, as also the requisite certificate of conveyances.

In faith whereof I have hereunto signed my name together with the said United States attorney, Long, and the aforesaid witnesses,
13 George Cenas and Paul A. Conand, on this the seventh day of July, A. D. 1870.

(Signed) A. B. LONG, *U. S. Att'y.*
GEO. CENAS.
P. A. CONAND.
ANDREW HERO, J'R, *Not. Pub.*

A true copy of the original act, duly stamped, on file & of record in my office.

New Orleans, July 8, 1870.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

EXHIBIT C.—*Filed Sept. 14th*, 1870.

The United States of America to J. B. Walton, auctioneer.

Charges upon resale of property corner of Canal & Marais streets, in this city, known as the May property, for account and risk of George Jonas, who purchased the property at public auction on the 31st May, 1870, and failed to comply with the terms and conditions of the adjudication made to him:

1870.

July 20th.	Advertising in N. O. Republican, 10 squares, 4 times, at intervals.....	$60 00
" 21st.	Advertising in N. O. Times, 8 sq., 4 t.....	48 00

		Cards, notices of sale on property.....	1 00
"	24.	Editorial notices—	
"	"	Times, 16 lines, @ 20 ct.....	3 20
"	"	Republican, 19 lines, @ 20 cts.....	3 80
"	30,	Times, 19 lines, @ 20 ct.....	3 80
		Am't carried forward	$119 80

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1870.		Amount bro't forward.....	$119 80
July	30.	Republican, 22 lines, @ 20c.....	4 40
"	31.	Times, 19 lines, @ 20c.....	3 80
"	"	Republican, 22 lines, @ 20c.....	4 40
Aug.	6.	Republican, 22 lines, @ 20c.....	4 40
"	"	Times, 23 lines, @ 20c.....	4 60
		Exchange tax on sale, $21,500, @ $\frac{3}{40}$ %.....	16 13
		Commissions on sale, 21,500, @ $2\frac{1}{2}$ %.....	537 50
Sept.	7.	Paid F. V. Cellos, watchman & keeper in charge of property from 1st July to July 15, '70, @ $3.00 per day.....	45 00
"	"	paid same from 15 July to 7th September, '70, @ $50 per month, 1 mo. 23 days.....	88 18
			$828 21

Rec'd payment.

J. B. WALTON,
Auctioneer.

NEW ORLEANS, *Sept. 7th*, 1870.

EXHIBIT D.—*Filed Sept. 14th*, 1870.

United States in a/c with A. Hero, jr., notary public.

1870.			
July	27th.	Mortgage & conveyance certificates, (2 May's name).....	$5 00
		Copies acts sale, May to U. S.....	10 00
		Notarial act of default.....	10 00
			$25 00

1st verdict, (endorsed on petition.)

We, the jury, find verdict in favor of plaintiff for $9,353 $\frac{21}{100}$ dollars, without interest.

C. W. BOOTHBY, *Foreman.*

NEW ORLEANS, *Mar. 2nd*, 1871.

15 *2nd verdict, (endorsed on petition.)*

There being no evidence of authority from the Secretary of the Treasury for the sale of the property, we, the jury, find a verdict for defendant.

(Signed) W. P. FRERET, *Foreman.*

NEW ORLEANS, *Feb. 7th*, 1872.

Citation.

UNITED STATES
vs. } No. 6265.
GEORGE JONAS.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon George Jonas, citizen of the State of , to comply with the demand of the United States contained in the petition of , of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's resi-
16 dence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of October, 1870.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 14th day of September, A. D. one thousand eight hundred and seventy, and of the Independence of the United States of America the 95th year.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received, Sept. 14, 1870, by the U. S. marshal, and, on the 15th day of September, 1870, served a copy hereof, with accompanying petition, on George Jonas, named hereon, personally, cor. Camp & Gravier streets. Sept. 16th, 1870.

(Signed) S. W. REED,
D'y U. S. Marshal.

Answer.—Filed Oct. 21st, 1870.

U. S. circuit court.

UNITED STATES
vs. } No. 6265. Answer of defendant.
GEORGE JONAS.

And now comes, by his undersigned attorney, George Jonas,
17 cited as def't herein, & for answer pleads a general denial, except as may be hereinafter specially admitted. Resp'd't admits that he was the adjudicatee for thirty thousand dollars of the property described in the pl't'ff's petition, & that he was, & has been, at all times, ready & willing to comply with the terms of sale; provided that the title tendered was made clear, indisputable, & satisfactory; that having paid a sound price he was entitled to a sound article, & a title free from all clouds, defects, or incumbrances whatever; that, as usual with him, & all prudent men, respondent submitted to counsel in good standing & versed in the law, the title held by pl't'ffs, & after careful exam-

ination & scrutiny, your respondent was advised, in a written *opinion*, that the title of pl't'ffs would be clear and indisputable, only, provided, they obtained the ratification & confirmation of Thomas P. May, the alleged vendor to pl't'ff, & pl't'ff was duly informed that your resp'd't stood ready & was willing to accept & comply upon these conditions, & when said confirmation was obtained, all which was duly communicated to pl't'ffs & their representatives, & especially to the notary before whom the act was to have been passed, but that, although some time elapsed, no effort to obtain the same was ever made, or if made, proved unavailing.

That respondent specially alleges that he never was informed, officially or otherwise, that pl't'ff refused to obtain the said
18 ratification, or that this reasonable & just protection against danger of eviction would not be finally obtained, & that pl't'ff, without procuring the same, or having any right to put your resp'd't in default, proceeded to advertise and resell the property "à la folle enchère," at your respondent's risk, under the laws of Louisiana, & actually adjudicated it to one Duffield, for $21,500.

Now, your resp'd't alleges that the attempt to place him in default, without having procured the ratification, confirmation, or intervention of said May, which he had required, & which pl't'ffs led him to believe would be procured, & to which he was justly and reasonably entitled, was absolutely illegal, null, & void, contrary to law and common sense.

& your resp'd't further avers that the difficulties in said title were apparent, & had been rejected by others, & arose from the following stipulation in the first act passed before Hero, N. P., on the 15th May, 1867:

Whereas the said Thomas P. May is indebted to the United States in the sum of one million & forty thousand dollars, the precise amount of said indebtedness to be hereafter determined, now, in settlement & liquidation of the said price (of $50,000.) the said agent, John Jay Knox, hereby & in his said capacity, grants said May an acquittance and discharge for so much of the said price as may enure to or
19 be received by the United States of America, after all just & legal claims having priority to those of the United States as aforesaid, or special privilege on said real estate, have been allowed or established, or satisfied; that the said May, as well as the pl't'ff, well knew & recognized the doubts & difficulties of said title, & attempted to have them removed or explained; but, in reality, the 2nd act confirmed & increased the doubts and made more apparent the clouds upon the previous act, sufficient to alarm any prudent man.

Resp'd't alleges that said May appeared before the same notary & filed the following declaration:

That whereas doubts have arisen relative to the meaning of the four acts & the bill of sale, described as follows: "An act of transfer by him, the said May, to the United States of America:" Now, therefore, to remove all such doubts, the said Thomas P. May moreover declared that said acts & bill of sale were not made in consideration of any fixed amount, but merely to transfer all the property mentioned in said acts to the United States of America, to enable them to take possession & dispose of them, the nett proceeds to be credited by the U. S. of America on the indebtedness thereto of the said T. P. May.

Respondent avers that this latter act actually increases the doubts & destroys the pretended sale, for want of a fixed price, & declares
20 it to be a mere transfer to the United States for a specified purpose, or as security for some unascertained indebtedness, pay-

ment of which was contemplated out of the proceeds of said property assigned, when sold, & that the absolute title in law remained in said May; & your resp'd't avers that, under the circumstances, his demand for protection was reasonable, prudent, & proper, that said May should intervene & make or confirm the title to your respondent, & until which, your respondent was not in default, & he had a perfect right to suspend acceptance, or to refuse title. Resp'd't alleges that it is well settled by the law of Louisiana in final resort, that "a purchaser at a judicial sale, who, before paying the price or entering into possession of the thing purchased, discovers illegalities in the proceedings calculated to throw a cloud upon the title, may refuse to execute the purchase." (9th A., p. 560.)

Defendant, for further answer, says there was no legal or binding sale of the property at the second sale, & that the forms & requisites of law were disregarded & not complied with, & that therefore this action cannot be maintained, inasmuch as the action on the folle enchère is invalid unless there has been two legal sales; the first establishing the price against the 1st purchaser, & the 2nd establishing a price against the 2nd purchaser, & that the first purchaser is only liable for
21 the difference, and if either sale is illegal, no difference of price can be legally established. Resp'd't specially pleads want of due & proper advertisements, under the act of Congress, to validate the 2d sale; & your resp'd't moreover alleges that the inducements, terms, & conditions of the second sale differed from the first, in this, that the public were specially notified by publications duly authorized, that the United States would give ample warranty of title to the purchaser, at the sale on the 6th Aug., 1870; whereas no such warranty was given at the first sale, & no usual terms of warranty are to be found in the title tendered your resp'd't, & that this alteration or variance is fatal to pl't'ffs' action or recovery under the "folle enchère."

Resp'd't specially denies that he is liable for the alleged difference set forth, or that he in any manner damaged the pl't'ff, or is liable to them in any sum whatever, and he avers that the loss or difference arose entirely from the fault & failure of pl't'ff to offer a clear, indisputable, & indefeasible title. That it is against the policy of the law & contrary to equity & good conscience to force a purchaser to take title of property which might involve him in dangerous & expensive litigation, & that where he is bona fide & acts under legal advice, he cannot be held
22 liable for imaginary damages. Wherefore resp'd't prays for trial by jury, & after due proceedings for judgment in his favor, & to be hence dismissed, with costs & for general relief.

(Signed) D. C. LABATT & J. ARONI,
For Resp'd't.

Hearing cause and verdict.—Extract from the minutes.

NEW ORLEANS, *Thursday, March 2d*, 1871.

Court met pursuant to adjournment.
Present, the honorable W. B. Woods, presiding judge.

UNITED STATES } No. 6265.
vs.
GEORGE JONAS.

This cause was called for trial before the court and a jury—district

attorney, for pl't'ffs; Labatt & Aroni, for def't—when the following jurors were called and sworn to try the case, to wit:

1. PIERRE CUSUNAVE.
2. FLORIAN LANGE.
3. JNO. PEMBERTON.
4. EDOUARD PITOT.
5. GEORGE GRACIEN.
6. C. W. BOOTHBY.
7. ALF. DELAUP.
8. AUG. HOFFMAN.
9. CHA'S DELPIT.
10. LEONVILLE AUGUSTIN.
11. W'M STUART.
12. CHA'S O. LIVANDAIS.

The two last being chosen as talismen, by reason of the exhaustion of the jury list.

23 And the panel being complete, the trial proceeded; and, after hearing the pleadings, evidence, and counsel, and receiving a charge from the court, C. W. Boothby was appointed foreman of the jury, and they retired to consider on their verdict. After a short deliberation they returned into court and delivered the following verdict, to wit:

We, the jury, find verdict in favor of plaintiff for $9,353.21 *dollars*, without interest.

C. W. BOOTHBY, *Foreman.*

N. ORLEANS, *Mar. 2nd*, 1871.

Note of evidence on trial of cause.—Filed March 2d, 1871.

U. S. circuit court in & for the district of Louisiana.

U. S. *vs.* GEO. JONAS. } 6265.

Pl'iff offered in evidence Document A.
Ja's B. Walton sworn for pl't'ff.
Pl't'ff offered Advertisement B, Letter D, Sale E.
Def't objected to Doc't E. Objection overruled, & bill of exception reserved by def't.

24 Pl't'ff offered Doc't F, G, & H, with certificate of mortgages annexed. Doc't H objected to. Objection overruled & doc't received. Also Doc't J, which is also objected to. Objection overruled & doc't admitted. Also, process-verbal K; also, ac't from solicitor, m'k'd L. Doc't L objected to. Objection overruled.

Pl'ff also offered Doc'ts M & N.

Def't offered advertisement in the Times of 6th Aug., '70, which is ruled out, and def't reserved bill of exception to ruling of the court.

Andrew Hero sworn for pl't'ff.
Pl't'ff offered Doc't O.
Patrick Irwin & Geo. Jonas sworn for def't.
Def't offered letter, m'k'd P.

Judgment.—Extract from the minutes.

NEW ORLEANS, *Thursday, March 2nd*, 1871.

Court met pursuant to adjournment.
Present, the honorable W. B. Woods, presiding judge.

UNITED STATES *vs.* GEO. JONAS. } No. 6265.

By reason of the verdict of the jury and in accordance there-

25 with, it is ordered, adjudged, & decreed that the United States do have and recover from the defendant, George Jonas, the sum of nine thousand three hundred & fifty-three $\frac{21}{100}$ dollars, without interest and costs of suit.

Rule for new trial.—Filed March 6, 1871.

Circuit court U. S., Judge Durell, presiding.

U. S.
vs. } No. 6265.
GEO. JONAS.

On motion of Labatt & Aroni, and Randell Hunt, of counsel for defendant, & on suggesting to the court that the verdict of the jury & judgment of the court are clearly contrary to law & evidence, it is ordered that pl't'ff show cause on 10th day of March, 1871, at 11 o'clock a. m., why a new trial should not be granted by this honorable court on the following grounds:

First. That the court erred in not permitting the def't to prove the facts alleged in his answer, and the issues made by the pleadings and especially his reasons for refusing to take the title tendered by pl't'ff, & that he obtained good legal advice in relation thereto & the defects thereof, which advice was maintained by other and distinguished counsel. And the court erred in ruling that, under the local laws & the decisions of the S. C. of Louisiana, which are uniformly respected
26 by the Federal courts, as to titles to real estate therein, def't was not justified in refusing a title fraught with danger & full of doubts and defects. That, under the local law, the S. C. of La. has said that where irregularities or informalities exist, calculated to throw a cloud on the title, the purchaser had the right to refuse title. 9th An. R., p. 560; 3 Peters, 127; 1 Peters, 363.

Second. That the court erred in refusing to allow def't to show and prove by the def't as a witness on the stand—& to which refusal a bill of exceptions was duly taken & is made part hereof—that A. B. Long, the then district attorney, now deceased, had promised and agreed to obtain the intervention & ratification of May, pl't'ffs vendor, to confirm the title tendered, & that def't rested upon this promise & fact, & was never notified that it could or would not be obtained; & that he was at all times ready & willing to comply with the terms of adjudication when the United States tendered him a perfect & indefeasible title & such as his counsel advised was safe, & of which the pl't'ff had been duly informed by written opinion.

Third. That the court erred in its rulings as to def't's testimony, as set forth in bills of exception filed herein, duly signed & sealed,
27 m'k'd from 1 to 6, inclusive, (which, with the testimony as taken down & made part of said bills, def't prays may be considered as part of this motion for a new trial,) & as requested by def't's counsel in the charge to the jury, by which rulings the jury were misled and misdirected.

Fourth. That the court erred in refusing to charge as requested by def't's counsel & set forth in the bills of exception to said charge made part thereof, & in charging, in opposition thereto, that the auctioneer was not bound to show or have written authority to make a valid sale of immoveable property under the laws of Louisiana, & that there was

no necessity for the approval of the Sec'y of the Treasury to validate the title tendered thereunder, & misled the jury thereby.

Fifth. That the court erred in charging the jury that the deeds from May to the United States conveyed a full, valid, & perfect title to the property, & that a sufficient title was tendered by the U. S. to def't to enable them to recover in this suit; thus taking the facts of the case from the consideration of the jury & instructing them contrary to law, & by which they misled.

Sixth. That the judgment & verdict are otherwise clearly contrary to law & evidence, and the verdict was in direct opposition to
28 the first instruction of the court given at request of counsel for the defence, & the jury was misled & must have believed that said charge had been refused by the court.

Marshal's return.

Received, Mar. 7th, 1871, by the U. S. marshal, and, on the same day, month, and year, served a copy of the within rule & grounds on J. R. Beckwith, U. S. attorney, personally, in U. S. court-room.

New Orleans, Mar. 7th, 1871.

(Signed) S. W. REED,
Dy U. S. Marshal.

Hearing rule for new trial.—Extract from the minutes.

NEW ORLEANS, *Friday, March 10th*, 1871.

Court met pursuant to adjournment.

Present, the honorable E. H. Durell, dist. judge; the honorable W. B. Woods, presiding judge. Before Hon. E. H. Durell.

UNITED STATES } No. 6265.
vs.
GEO. JONAS. }

The rule for a new trial was called—Labatt & Aroni for pl'ff in rule; dist. att'y for U. S.—and, after hearing argument, the court took time to consider.

29 *Order: Re-instating cause.—Extract from the minutes.*

NEW ORLEANS, *Monday, April 10th*, 1871.

Court met pursuant to adjournment.

Present, the honorable E. H. Durell, district judge.

UNITED STATES } No. 6265.
vs.
GEO. JONAS. }

For reasons orally assigned it is ordered that the cause be re-instated, and that arguments be had on the question whether the approval of the sale by the Secretary is not the muniment of title and was indispensable in the premises.

Hearing re-argument on motion for new trial.—Extract from the minutes.

NEW ORLEANS, *Saturday, April 22nd,* 1872.

Court met pursuant to adjournment.
Present, the honorable E. H. Durell, district judge.

UNITED STATES
vs. } No. 6265.
GEORGE JONAS.

The cause came up on a re-argument on the motion for a new trial—J. R. Beckwith for pl'ff's; Labatt & Aroni for def'ts—and, after hearing the argument, the court took time to advise.

30 *Order: New trial granted.—Extract from the minutes.*

NEW ORLEANS, *Wednesday, June 21st,* 1871.

Court met pursuant to adjournment.
Present, the honorable E. H. Durell, district judge.

UNITED STATES
vs. } No. 6265.
GEO. JONAS.

For reasons orally assigned by the court, it is ordered that the verdict and judgment herein be set aside and that a new trial be granted.

Hearing and continuing cause.—Extract from the minutes.

NEW ORLEANS, *Tuesday, February 6th,* 1872.

Court met pursuant to adjournment.
Present, the honorable E. H. Durell, district judge.

UNITED STATES
vs. } No. 6265.
GEO. JONAS.

This cause was called for trial—U. S. att'y for pl't'ff's; D. C. Labatt for def't—when the following jurors were called and sworn to try the issue:

31
1. F. N. FORTIER.
2. M. C. LEBLANC.
3. BAZILE CROCKER.
4. JA'S KOPPEL.
5. W. P. FRERET.
6. M. HAMMERER.
7. VICTOR PRADOS.
8. EMILE DUPRÉ.
9. E. J. BRUNETT.
10. I. B. TUSSON.
11. OCTAVE FORSTALL.
12. O. VALLETTE.

And the jury being complete the trial proceeded; and, after hearing the pleadings and the evidence, the cause is continued till to-morrow at 11 a. m.

Note of evidence on trial of cause.—Filed March 2nd, 1871.

U. S. vs. GEO. JONAS. } No. 6265.

Pl'ffs offered document marked "A." filed March 2nd, 1871; also Document "B," filed same date; also, copy of sale, tendered Mr. Jonas, "H."

Def't objected. Document admitted by court.

Pl'ffs offered Doc't "E," filed March 2nd, 1871.

Hearing and submission of cause.—Extract from the minutes.

NEW ORLEANS, *Wednesday, Feb'y 7th*, 1872.

Court met pursuant to adjournment.

32 Present, the honorable E. H. Durell, district judge.

UNITED STATES vs. GEORGE JONAS. } No. 6265.

This cause was resumed before the court and jury; and, after hearing further evidence and argument, and receiving a charge from the court, W. P. Freret was appointed foreman of the jury, and they retired to consider on their verdict. After due deliberation they returned into court and delivered the following verdict, to wit: There being no evidence of authority from the Secretary of the Treasury for the sale of the property, we, the jury, find a verdict for defendant.

New Orleans, Feb. 7th, 1872.

W. P. FRERET, *Foreman.*

Whereupon it is ordered that the same be recorded.

Note of evidence on trial of cause.—Filed February 7th, 1872.

U. S. circuit court, district of Louisiana.

U. S. vs. GEO. JONAS. } 6265.

33 Pl'ff offered Doc't "D." filed March 2nd, 1871.

Deed of conveyance to Duffield, "L." filed March 2nd, 1871.

A. Hero, jr., sworn for U. S.

Pl'ff offered Exhibit "O." filed M'ch 2nd, '71; also, Doc't "P."

Patrick Irwin & Geo. Jonas, for def't, not examined.

Def't offered deed of T. P. May—copy to be furnished. Objected to by pl'ff. Objection ruled out.

Plaintiff's bill of exceptions.—Filed Feb'y 7th, 1872.

Circuit court of the United States, district of Louisiana.

THE UNITED STATES OF AMERICA vs. GEORGE JONAS. } No. 6265. Bill of exceptions taken by plaintiffs.

Be it remembered that afterwards, to wit, on the 7th day of February, A. D. 1872, of the November term of said court, A. D. 1871,

this cause came on for trial before the Hon. E. H. Durell, district judge, then and there holding the said term of the said circuit
34 court, and that a jury was then and there empanelled to try said cause, when the said plaintiff, by its counsel, to prove and maintain the issue and allegations of the plaintiffs' petition, on its part did produce and read and give to the jury the following evidence:

In order to prove and establish the title of the United States to the property and real estate in its petition herein described, as well as to show the manner in which the United States acquired the same, and then and there produced and read to the jury, as evidence, the following duly certified notarial act of sale from Thomas P. May and wife to the United States:

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that, on this fifteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in & for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned,
35 personally came and appeared Thomas P. May, of this city, who declared that for the consideration hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign and set over, with all legal warranties, unto the United States of America, represented by John Jay Knox, the duly appointed and authorized special agent of the said United States of America, he being here also present, and, in his said capacity, accepting and purchasing for the said United States of America and their assigns, and acknowledging delivery and possession thereof, the following described real and personal property, to wit:

1°. Three certain lots of ground, together with the buildings and improvements thereon, and the rights, ways, privileges, and appurtenances thereunto belonging or in any wise appertaining, situate in the first district of this city, in the square bounded by Gasquet, Canal, Marais, and Villeré streets, designated by the numbers one, two, and three, on a plan drawn by J. Pilié, surveyor, on the 3d May, 1839, deposited in the office of L. Hermann, late a notary in this city. Lots Nos. one and two measure each twenty-one feet three inches & six lines front on Canal street, by a depth of one hundred and seventeen feet ten inches
36 and five lines, between parallel lines, lot No. one forming the corner of Canal and Marais streets; and lot No. three measures twenty-one feet three inches and six lines front on Canal street by one hundred and twenty-seven feet ten inches and five lines in depth between parallel lines, American measure, together with the use of an alley opening on Marais street, in the rear of said lots, measuring ten feet wide, and common to said lots; and said property is the same which said Thomas P. May acquired by purchase from George Ruleff, by an act passed before James Graham, a notary in this city, on the second day of August, eighteen hundred and sixty-five.

2°. Also, the household furniture in, upon, and pertaining to the hereinbefore-described premises, an inventory of which to be annexed hereto as provided for by law, unless otherwise agreed upon, is hereby dispensed with by the said agent, John Jay Knox: To have, to hold the said property and appurtenances unto the said purchaser, their heirs and assigns forever.

And the said vendor hereby binds himself and his heirs forever to warrant and defend the property and appurtenances herein conveyed, against all legal claims and demands whatever.

The said vendor moreover transfer unto the said purchaser all the rights and actions of warranty to which he himself is entitled, against all the former proprietors of the property, herein conveyed, subrogating said purchaser to the said rights and actions, to be by them enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted for and in consideration of the price and sum of fifty thousand dollars, ($50,000.00,) payable in the manner following, to wit:

Whereas the said Thomas P. May is indebted to the United States of America in the sum of about one million and forty thousand dollars, the precise amount of the said indebtedness to be hereafter determined:

Now, in settlement and liquidation of the said price, the said agent, John Jay Knox, hereby, and in his said capacity, grants the said May an acquittance and discharge for so much of the said price as may enure to or be received by the United States of America, after all just and legal claims having priority to those of the United States of America, as aforesaid, or special privilege on the said real estate, have been allowed or established and satisfied.

By reference to the annexed certificate of the recorder of mortgages in and for this parish, dated this day, it will be seen that the real estate herein conveyed is free from encumbrance in the name of said vendor, with the exception—1st, the special mortgage granted by him in favor of W. T. Hepp, per act before S. Magner, a notary in this city, on the twenty-fourth day of April, 1867, to secure twenty-five thousand dollars, interest and costs, as per said act; and, 2nd, the general one, in favor of Mrs. Mary Taylor, wife of said Thomas P. May, resulting from their marriage contract, received by F. Grima, notary, on the thirteenth day of March, 1866.

Said purchasers assume and bind themselves to pay such taxes as may appear to be due on the said property, and agree to hold me, said notary, harmless and indemnified in consequence of their non-payment.

And now, to these presents, personally came and appeared Madam Mary Taylor, of lawful age, wife of said Thomas P. May, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she approved and ratified the same; and that it is her wish and intention to release in favor of the said purchaser the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband, or otherwise.

Whereupon, I, the said notary, did inform the said Mrs. May, apart and out of the presence and hearing of her husband, and before receiving her signature hereto, that, by the laws of this State, the wife has the legal mortgage on the property of her husband—first, for the restitution of her dowry, and for the re-investment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and re-investment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her husband; and, fifthly, for the

amount of her paraphernal property, alienated by her and received by her husband, or otherwise disposed of for his individual interest; that in making her intended renunciation, she would deprive herself, irrevocably and forever, of all rights of reclamation against the property herein described, whether under mortgage, privilege, or otherwise.

And the said Mrs. May did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any nature and kind whatever, to which she is or may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Thomas P. May, being now present, aiding and authorizing the said Mrs. May in the execution of these presents, she, the said Mrs. May, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office at New Orleans, aforesaid, in the presence of James Graham & George Cenas, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

T. P. MAY.
MARY MAY.
JNO. J. KNOX.
JA'S GRAHAM.
GEO. CENAS.
ANDREW HERO, JR.,
Not. Pub.

Registered conveyance office B. 92, fo. 461.
New Orleans, 16th May, 1867.
[SEAL.] ROBERT B. STILLE, *Register.*

A true copy of the original act (duly stamped) extant in my notarial records.
New Orleans, June 30, 1870.
[SEAL.] ANDREW HERO, JR.,
Not. Pub.

And said act of sale having been so read in evidence as aforesaid, the said plaintiff did then and there produce and read in evidence to said jury the following written proces-verbal of the sale of the said property to the said defendant, by J. B. Walton, a duly appointed and qualified auctioneer of the city of New Orleans, parish of Orleans, State of Louisiana.

Sale by auction, by J. B. Walton, auctioneer, by order of the Solicitor of the Treasury and for account of the United States Government.

I, James B. Walton, a duly licensed auctioneer, in & for the parish of Orleans & city of New Orleans, do hereby certify that,

by virtue and in pursuance of an order of the Solicitor of the Treasury, and after the regular & legal advertisements had been published in the New Orleans Republican, the official journal of the parish of Orleans, published in this city, on the 27th day of February, the 6th, 13th, 20th, 27th days of March; the 3d, 10th, 17th, & 24th days of April; the 1st, 3d, 8th, & 15th days of May, and daily from the 15th of May until the 31st day of May, 1870, inclusive; and in French, in the New Orleans Bee, (a newspaper published in the French & English languages,) in this city, on the 1st, 6th, 13th, 20th, & 27th days of March, & on the 3d, 10, 17, & 24th days of April, 1870, I did, on Tuesday, the 31st day of May, 1870, at 12 o'clock m., at the St. Charles Auction Exchange, in this city, proceed to sell by public auction, to the last & highest bidder, for account of the United States Government, the following-described property, to wit:

Three lots of ground, with the buildings & improvements thereon, corner of Canal & Marais streets, in the first district of this city, in the square bounded by Canal, Gasquet, Marais, and Villeré streets, designated by the Nos. 1, 2, & 3, on a plan drawn by Joseph Pilié, sur-
43 veyor, on the 3rd day of May, 1839, deposited in the office of Lucien Hermann, late a notary in this city, measuring each 21 feet 3 inches 6 lines front on Canal street, by a depth each, between parallel lines, of 127 feet 10 inches 5 lines, all American measure, lot No. 1 forming the corner of Canal & Marais streets, together with the use of an alley in the rear of said lots, opening on Marais street, common to said lots, & being ten feet wide.

The improvements on these lots consist of a two-story and attic brick residence & two-story brick back-buildings, etc., known as the late residence of Tho's P. May, esq'r.

To George Jonas, he being the last highest bidder for the price & sum of thirty thousand dollars, ($30,000.00.)

TERMS & CONDITIONS.—One-third cash in U. S. Treasury notes, the remainder in the notes of the purchaser to his own order & by him endorsed, payable at one and two years in equal amounts, bearing interest at eight per cent. per annum from date until paid, & special mortgage & vendor's privilege upon the property until final payment. The mortgage to embrace the clause of five per cent. for attorney's fees in case of suit to recover payment of the notes or any part thereof, should they not be punctually paid at maturity. The buildings to be
44 insured by the purchaser to the satisfaction of the agent of the United States Government, & to be kept insured until final payment, & the policies to be transferred to the vendor.

Act of sale before A. Hero, j'r, notary public, at the expense of the purchaser.

J. B. WALTON, *Auctioneer.*

And the same having been read to the jury, the said plaintiff did then and there produce and read to the jury the following advertisements referred to in said proces verbal, and did then and there produce the files of the newspapers referred to in said proces-verbal to show that the said advertisement was duly published as stated in said proces verbal; and also produced a witness, J. B. Walton, the said auctioneer, who, being duly sworn, did testify to the jury, that all of the matters and allegations in said proces-verbal were true in fact as there alleged.

The following is the advertisement above referred to:

Original sale by J. B. Walton, without reserve.

45 Elegant mansion on Canal street, and three lots of ground corner of Marais street, in the first district, late residence of Thomas P. May, esq'r., and the superb and complete assortment of household furniture of the establishment. By order of the Solicitor of the Treasury, and for account of the United States Government. By J. B. Walton, auctioneer. Office, No. 162 Common street.

Tuesday, May 31st, 1870, at 12 o'clock m., at the St. Charles Auction Exchange, in the basement-rotunda of the St. Charles Hotel, by order of the Solicitor of the Treasury, and for account of the United States Government, will be sold by auction, to the highest bidder, the following-described valuable property, to wit:

That elegant residence situated at the corner of Canal and Marais streets, first district, built by Mr. Armand Heine for his own occupation, and subsequently owned and occupied by Thomas P. May, esq'r. The buildings are of modern construction and architecture, and contain all the conveniences and improvements in use in the best
46 dwellings of the present day. They embrace spacious halls, drawing-rooms, parlors, dining-saloon, library, bed-rooms, closets, baths, servants' apartments, etc., all finished in the best style, without regard to cost.

The property embraces three lots of ground in the square bounded by Canal, Gasquet, Marais, and Villeré streets, designated by the Nos. 1, 2, and 3, on a plan drawn by Joseph Pilié, surveyor, on the 3d May, 1839, deposited in the office of Lucien Hermann, late notary in this city, measuring each 21 feet 3 inches and 6 lines front on Canal street, by a depth, between parallel lines, of 127 feet 10 inches and 5 lines, all American measure, lot No. 1 forming the corner of Canal and Marais streets, together with the use of an alley in the rear of said lots, opening on Marais street, common to said lots, and being ten feet wide.

This property, from its elegant construction and convenient and accessible location upon Canal street, presents an unusual opportunity to secure a superior residence.

TERMS AND CONDITIONS.—One-third cash, in United States Treasury notes; the remainder in the notes of the purchaser, to his own order, and by him endorsed, payable at one and two years, in equal
47 amounts, bearing interest at eight per cent. per annum from date until paid, and special mortgage and vendor's privilege upon the property until final payment. The mortgage to embrace the clause of five per cent. for attorney's fees in case of suit to recover payment of the notes, or any part thereof, should they not be punctually paid at maturity. The buildings to be insured by the purchaser, to the satisfaction of the agent of the United States Government, and to be kept insured until final payment, and the policies to be transferred to the vendor.

Act of sale before A. Hero, jr., notary public, at the expense of the purchaser, including the U. S. internal-revenue stamps.

And, as tending to show and prove that the said defendant wholly failed to fulfil the obligations by law imposed on him by virtue of said sale and adjudication of said property to him, as shown in said process-verbal of said auction-sale, but did in all things in law make default therein, and to show that the defendant had in all things been legally

put in default in respect thereof, as required by the laws of the State of Louisiana, the said plaintiff did then and there produce and
48 read to the jury the following proces-verbal of proceedings had before the said Andrew Hero, junior, the said notary public, together with the act of sale by the Solicitor of the Treasury, to the said George Jonas, and the certificate of acknowledgment, and certificates of the conveyance and mortgage, offices, and other certificates attached thereto, as now made a part of this bill of exceptions, that is to say, the following documents:

STATE OF LOUISIANA,
City of New Orleans, Parish of Orleans:

Be it known that, on this second day of July, in the year of our Lord one thousand eight hundred and seventy, I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified in the presence of George Cenas and Paul A. Conand, witnesses of lawful age, domiciliated in this city, at the hour of a quarter before 1 o'clock p. m. of said day, at the request of A. B. Long, esq'r., attorney of the United States for the district of
49 Louisiana, did deliver to George Jonas, of this city, a certain letter, which is written in the words and figures following, viz:

NEW ORLEANS, *July 2nd*, 1870.

GEORGE JONAS, Esq.:

SIR: At a public sale made by James B. Walton, a duly licensed auctioneer of this city, on the 31st May, 1870, by order of the Solicitor of the Treasury for the account of the United States Government, the following described property was adjudicated to you, viz:

Three lots of ground with the buildings and improvements thereon, and all rights and privileges thereto belonging, situate in the first district of this city, in the square bounded by Gasquet, Canal, Marais, and Villere streets, designated by the numbers one, two, & three, on a plan drawn J. Pilié, surveyor, dated 3rd May, 1839, and deposited in the office of L. Hermann, late a notary in this city. Lots Nos. one and two measure each twenty-one feet three inches and six lines front on Canal street, by a depth of one hundred and seventeen feet ten inches and five lines between parallel lines; lot No. one forming the corner of Canal and Marais streets; and lot No. three measures twenty-one feet three inches and six lines front on Canal street, by one hundred and twenty-seven feet ten inches and five lines in depth, between parallel lines,
50 American measure, together with the use of an alley opening on Marais street, ten feet wide, common to said lots.

Same having been so adjudicated unto you as the last and highest bidder thereon, for the price and sum of thirty thousand dollars, payable one-third cash in United States Treasury notes, the remainder in your notes to your own order, and by you endorsed, payable at one and two years, in equal amounts, with interest at the rate of eight per cent. per annum from date until final payment, and secured by a special mortgage with vendor's privilege upon said property until final payment. The mortgage to embrace the clause of five per cent. attorney's fees in case of suit to recover payment of said notes, or any part thereof, should they not be punctually paid, at maturity, and the buildings to be insured by you to the satisfaction of the agent of the United States Government, and to be kept insured until final payment, and the policies transferred to the vendor.

In confirmation of said sale, the act of sale thereof has been prepared and executed on behalf of the United States Government, by the Solicitor

of the Treasury, and nothing remains to give and transfer to you a good, valid, and unencumbered title to said property, but the acceptance
51 by you of such sale, your signature to said act in token thereof, and of granting said mortgage, and your payment or furnishing of the money and notes forming the consideration.

Now, you will please take notice, that I demand from you the execution of said act of sale on your part, and the payment or furnishing of said money and notes forming said consideration on or before Thursday next, the 7th July inst., at 12 o'clock, at noon, at the office of Andrew Hero, jr., No. 17 Commercial place, in this city, the notary before whom said sale is conditioned to be passed, where and when I will be present to receive from you said consideration. And should you fail to comply with this demand and in every respect conform to said sale at or before the time specified, you will be placed in default, and necessary legal measures will be taken against you, for all loss or damage that may be sustained in consequence of your non-compliance.

I am, sir, very respectfully, your ob't serv't,

(Signed) A. B. LONG,
U. S. Att'y.

In faith whereof I have hereto signed my name, together with said witnesses, on the day and date aforesaid.

(Signed) GEO. CENAS.
P. A. CONAND.
ANDREW HERO, JR.,
Not. Pub.

52 And now, to wit, at the hour of six o'clock p. m. of Thursday, the seventh day of July, eighteen hundred and seventy, I, Andrew Hero, jr., notary public aforesaid, do hereby declare and certify that at no time on said Thursday, the seventh day of July, 1870, nor at any time or day since said second day of July, 1870, did said George Jonas appear, either in person or by agent or attorney, at my office in reference to the above-mentioned act of sale, or for the purpose of complying or proffering to comply with the demand contained in the aforesaid letter, or the terms and conditions of said public sale.

And I further certify that A. B. Long, esq., attorney of the United States of the district of Louisiana, was present and in attendance at my office, No. 17 Commercial place, from the hour of half past eleven o'clock a. m. until half past twelve o'clock p. m. of Thursday, agreeably to the said letter.

And at this hour, the said United States attorney, A. B. Long, being again present at my office, required and requested me, notary, to record and deposit among my notarial archives, to serve and avail as occasion shall or may require, the act of sale of the within-described property unto said George Jonas, executed by the Solicitor of the Treasury of the
53 United States, and referred to in the above letter; and also the requisite certificate of mortgage from the recorder of mortgages of this parish, and the proces-verbal of said auctioneer of the aforesaid sale, as also its requisite certificate of conveyances.

In faith whereof I have hereto signed my name, together with the said United States attorney, Long, and the aforesaid witnesses George Cenas and Paul A. Conand, on this the seventh day of July, A. D. 1870.

(Signed) A. B. LONG, *U. S. Att'y.*
GEO. CENAS.
P. A. CONAND.
ANDREW HERO, JR., *Not. Pub.*

A true copy of the original act (duly stamped) on file & of record in my office.

New Orleans, July 8, 1870.

ANDREW HERO, JR., *Not. Pub.*

This indenture, made and entered into in duplicate this twenty-third day of June, A. D. one thousand eight hundred and seventy, between Everett C. Banfield, Solicitor of the Treasury of the United States, duly appointed and qualified as such, and herein acting in such capacity for and on behalf of the United States of America, party hereto of the first part, and George Jonas, of the city of New Orleans, State of Louisiana, party hereto of the second part.

54 Whereas by an act passed before Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, on the fifteenth day of May, eighteen hundred and sixty-seven, Thomas P. May, of the city of New Orleans, State of Louisiana, did transfer and set over unto the United States of America, in part liquidation of certain indebtedness due by him unto the said United States of America, all that certain property situate at and forming the corner of Canal and Marais streets, in the first district of said city of New Orleans, hereinafter particularly decided;

And whereas, under the provisions of section 9 of an act of the Congress of the United States of America, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," approved March 3d, 1863, the said Solicitor of the Treasury caused the above-mentioned property to be exposed for sale at public auction at the St. Charles Auction Exchange, on Charles street, between Gravier and Common streets, in the said city of New Orleans, State of Louisiana, on Tuesday, the thirty-first day of May, 1870, at twelve o'clock m., by James B. Walton, a duly licensed auctioneer of said city of

55 New Orleans; after having first given due and legal notice of the time, place, and conditions of said sale by advertisements thereof in English in the New Orleans Republican, a newspaper published in said city of New Orleans, and the official journal of the United States, on the twenty-seventh day of February; the sixth, thirteenth, twentieth, and twenty-seventh days of March; the third, tenth, seventeenth, and twenty-fourth days of April; and the first, third, eighth, and fifteenth to thirty-first days of May, eighteen hundred and seventy; and by advertisements thereof in French, in the New Orleans Bee, a newspaper published in said city of New Orleans, on the first, sixth, thirteenth, twentieth, and twenty-seventh days of March, and the third, tenth, seventeenth, and twenty-fourth days of April, eighteen hundred and seventy;

And whereas, at said public sale, the above-mentioned and hereinafter-described property was adjudicated unto the said George Jonas, as the last and highest bidder thereon, for the price and sum of thirty thousand dollars, payable upon the following terms and conditions, viz: One-third cash in United States Treasury notes, the remainder in the notes of the purchaser to his own order and by him endorsed, payable at one

56 and two years, in equal amounts, bearing interest at eight per cent. per annum from date until paid, and special mortgage & vendor's privilege upon the property until final payment. The mortgage to embrace the clause of five per cent. or attorney's fees in case of suit to recover payment of the notes or any part thereof, should they not be punctually paid at maturity. The buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government,

and to be kept insured until final payment, and the policies to be transferred to the vendor:

Now this indenture witnesseth that, in confirmation of the said adjudication and in order to give unto the said George Jonas an authentic title to the said property, and for and in consideration of the aforesaid price and sum of thirty thousand dollars, whereof ten thousand dollars have been paid cash in United States Treasury notes, at or before the ensealing and delivery of these presents, by the said party of the second part unto the said party of the first part, and the residue thereof is payable in two certain promissory notes for the sum of ten thousand dollars each, drawn by said George Jonas, to the order of and endorsed by himself, dated at New Orleans, Louisiana, the thirty-first day of May,
57 eighteen hundred and seventy, the day of said adjudication, and made payable at one and two years, respectively, after date, with interest at the rate of eight per cent. per annum from date until final payment, the receipt of which said cash and notes is hereby acknowledged by the said party of the first part, the said party of the first part, as Solicitor of the Treasury as aforesaid, and in his official capacity as such, hath granted, bargained, sold, aliened, remised, released, conveyed, confirmed, and assigned, and by these presents grants, bargains, sells, aliens, remises, releases, conveys, confirms, and sets over unto the said party of the second part, said George Jonas, his heirs and assigns forever, all and singular the above mentioned and referred to property, which is designated and described as follows, viz:

Three certain lots of ground, together with the buildings and improvements thereon, and the rights, ways, privileges, and appurtenances thereunto belonging, or in any wise appertaining, situate in the first district of New Orleans, in the square bounded by Gasquet, Canal, Marais, & Villeré streets, designated by the numbers one, two, and three, on a plan drawn by J. Pilié, surveyor, on the 3d May, 1839, de-
58 posited in the office of L. Hermann, late a notary in said city; lots Nos. one and two measure each twenty-one feet three inches and six lines front on Canal street, by a depth of one hundred and seventeen feet ten inches and five lines, between parallel lines, lot No. one forming the corner of Canal and Marais streets; and lot No. three measures twenty-one feet three inches and six lines front on Canal street, by one hundred and twenty-seven feet ten inches and five lines in depth, between parallel lines, American measure, together with the use of an alley opening on Marais street in the rear of said lots, measuring ten feet wide, and common to said lots; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said United States of America of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the
59 second part, his heirs, and assigns, to his and their own proper use and behoof forever.

1st. That the afore-described property and appurtenances are to remain mortgaged and hypothecated as well as encumbered with a vendor's lien and privilege in favor of the United States of America, and of any and all such person or persons as may hereafter become the owner or owners of said notes, or either of them, until the full and final

payment of the aforesaid notes, in capital and interest, the said Jonas hereby binding himself and his heirs not to alienate, deteriorate, or encumber the aforesaid and herein-conveyed property, to the prejudice of these presents.

2nd. That he, said George Jonas, and his heirs and assigns, shall and will cause all and singular the buildings and improvements on the lots of ground afore-described to be insured, and kept insured, against the risk of fire by one of the insurance companies of the city of New Orleans, in the sum of fifteen thousand dollars, until the full and final payment of the afore-described notes, and to transfer and deliver unto the said party of the first part the policy or policies of such insurance or insurances; in default whereof said party of the first part, and any and all holders of said notes, is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said George Jonas. But this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

3d. That in the event of the said notes, or either of them, not being punctually paid at maturity, it shall be lawful for, and he, the said George Jonas, hereby authorizes the said party of the first part, or any other holder or holders thereof, to cause all and singular the property hereinbefore described, and herein mortgaged, to be seized and sold under executory process, (issued by any competent court,) without appraisement, to the highest bidder, payable cash, the said Jonas hereby expressly dispensing with all and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraisement of moveable or immoveable effects, etc., seized and sold under executory or other legal process, hereby confessing judgment in favor of said party of the first part, and such person or persons who may be the holder or holders of said notes, or either of them, for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

4th. That the said Jonas by these presents bind and obligate himself and his heirs to pay and re-imburse unto said party of the first part, and such person or persons as may be the holder or holders of said notes or either of them, all such lawyers' or attorneys' fees, together with all such costs, charges, and expenses as said party of the first part or any such holder or holders shall or may incur or pay in the event of the non-payment of said notes at maturity; said attorneys' fees, however, to be fixed at five per cent. on the amount in suit.

And 5th. That, in order to secure the faithful performance of the foregoing obligations and the re-imbursement and payment of all premium or premiums as shall be paid by the said party of the first part, or any holder or holders of the aforesaid notes, in causing insurance to be effected on default of said Jonas, his heirs or assigns as aforesaid, he, the said Jonas, by these presents further specially mortgages and hypothecates the hereinbefore-described property unto and in favor of said party of the first part and all holders of the said notes, or either of them.

In witness whereof the said E. C. Banfield, Solicitor of the Treasury as aforesaid, hath hereunto set his hand and caused his seal of office to be affixed the day and year first above mentioned. And the said George Jonas hath hereunto set his hand and seal, the day of , A. D. one thousand eight hundred and seventy.

[SEAL.] (Signed) EVERETT C. BANFIELD,
Solicitor of the Treasury.

Signed, sealed, and delivered by E. C. Banfield, Solicitor of the Treasury, in presence of—

(Signed) J. M. McKINNEY.
" JOHN DAVIDSON.

UNITED STATES OF AMERICA,
District of Columbia, City of Washington:

Be it remembered that, on this twenty-third day of June, A. D. one thousand eight hundred and seventy, before the undersigned, a commissioner of the State of Louisiana, within and for the city of Washington, District of Columbia, duly commissioned and authorized to take the acknowledgment and proof of execution of deeds and other instruments of writing, and to take testimony, administer oaths and affirmations, etc., to be recorded or used in said State of Louisiana, personally came and appeared Everett C. Banfield, Solicitor of the Treasury of the United States, and executed the within and foregoing conveyance in such
63 capacity for and on behalf of the United States of America, in my presence and in that of the two witnesses whose names are hereto subscribed, and thereupon acknowledged that he executed the same as his act and deed in such capacity of Solicitor of the Treasury and for and on behalf of the United States of America, on the day and year, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal of office as commissioner aforesaid at my office in said city of Washington, the day and date above written.

[SEAL.] (Signed) N. CALLAN,
Comm'r for Louisiana.

STATE OF LOUISIANA,
City of New Orleans:

Be it remembered that, on this day of , A. D. one thousand eight hundred and seventy, before me, the undersigned, a notary public in and for this city, at New Orleans, parish of Orleans, in the State of Louisiana, personally appeared the within named George Jonas,
64 and executed the within and foregoing conveyance in my presence, and in that of two witnesses, whose names are hereto subscribed as such, and thereupon acknowledged that he executed the same as his act and deed for the considerations, uses, and purposes therein mentioned; and I, the said notary, do further certify that the two promissory notes described and given in said in said conveyance were by me paraphed Ne varietur for identification therewith.

In faith whereof I grant these presents under my hand and seal as notary public as aforesaid in the city of New Orleans, on this day of , A. D. one thousand eight hundred and seventy.

Sale by auction, by J. B. Walton, auctioneer, by order of the Solicitor of the Treasury & for account of the United States Government.

I, James B. Walton, a duly licensed auctioneer, in and for the parish of Orleans & city of New Orleans, do hereby certify that, by virtue of & in pursuance of an order of the Solicitor of the Treasury, & after the regular and legal advertisements had been published in the New Orleans Republican, the official journal of the parish of Orleans, pub-
65 lished in this city, on the 27th day of February; the 6th, 13th, 20th, & 27th days of March; the 3d, 10th, 17th, & 24th days of April; the 1st, 3d, 8th, & 15th days of May, and daily from the 15th day of

May until the 31st day of May, 1870, inclusive; & in French, in the New Orleans Bee, a newspaper published in the French & English languages in this city, on the 1st, 6th, 13th, 20th, & 27 days of March, & on the 3d, 10, 17 & 24th days of April, 1870, I did, on Tuesday, the 31st day of May, 1870, at 12 o'ck m., in the Saint Charles Auction Exchange in this city, proceed to sell by public auction, to the last and highest bidder, for account of the United States Government, the following-described property, to wit:

Three lots of ground, with the buildings and improvements thereon, corner of Canal & Marais streets, in the first district of this city, in the square bounded by Canal, Gasquet, Marais, & Villeré streets, designated by the Nos. 1, 2, & 3, on a plan drawn by Joseph Pilié, surveyor, on the 3d day of May, 1839, deposited in the office of Lucien Hermann, late a notary in this city, measuring each 21 feet 3 inches & 6 lines front on Canal street, by a depth each, between parallel lines, of 127 feet 10 inches 5 lines, all American measure; lot No. 1, forming the corner of Canal & Marais streets, together with the use of an alley in the rear of
66 said lots, opening on Marais street, common to said lots, & being ten feet wide.

The improvements on these lots consist of a two-story & attic brick residence & two-story brick back buildings, etc., known as the late residence of Thomas P. May, esq., to George Jonas, he being the last & highest bidder, for the price and sum of thirty thousand dollars, ($30.000.00.)

TERMS & CONDITIONS.—One-third cash, in U. S. Treasury-notes; the remainder in the notes of the purchaser to his own order, & by him endorsed, payable at one & two years, in equal amounts, bearing interest at eight per cent. per annum, from date until paid, & special mortgage & vendor's privilege upon the property until final payment; the mortgage to embrace the clause of five per cent. for attorney's fees, in case of suit to recover payment of the notes or any part thereof, should they not be punctually paid at maturity; the buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government, & to be kept insured until final payment, & the policies to be transferred to the vendor.

67 Act of sale before A. Hero, jr., not. pub., at the expense of the purchaser.

(Signed) J. B. WALTON, *Auctioneer.*

NOTICE.—The register of conveyances will not be responsible for the record of any acts of sale inscribed in book No. 17 of this office, the same having been lost or stolen previous to his taking possession of the office of register of conveyances.

STATE OF LOUISIANA, *Parish of Orleans:*

OFFICE OF THE REGISTER OF CONVEYANCES,
New Orleans, 7th July, 1870.

The undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, hereby certifies that, according to the records of this office, it does not appear that the United States of America has alienated the following property, to wit:

Three lots of ground, with buildings, etc., in the 1st dist. of this city, designated by the Nos. 1, 2, & 3, of square bounded by Gasquet, Canal, Marais, and Villeré streets. Lots 1 & 2 measure each 21′ 3″ 6‴ front on Canal street, by 116′ 10″ 5‴ deep between parallel lines; lot No.

1 forms the corner of Canal and Marais streets. Lot No. 3 meas-
68 ures 21′ 3″ 6‴ front on Canal st., 127′ 10″ 5‴ deep between parallel lines, with the use of an alley opening on Marais street, in the rear of said lots, measuring 10′ wide, and common to said lots.

Acquired 15th May, 1867.
Recorded in book 92, folio 461.
[SEAL.] (Signed) C. B. FISH, *Dep'ty.*

[Rev. st'p, 5 c.]

[Rev. stamp, 5 c.] OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that, in the records of this office, there is no other mortgage standing in the name of the United States of America, and recorded against the following-described property, to wit:

"Three lots of ground, with buildings, etc., in 1st dist., desig. by Nos. 1, 2, & 3, in sq. bounded by Gasquet, Canal, Marais, & Villeré sts. Lots 1 & 2, meas. each 21′ 3″ 6‴, on Canal st., by 127′ 10″ 5‴, bet. par'l
69 lines, with the use of an alley opening on Marais street, in rear of said lots, meas. 10 ft. wide, & common to said lots. Than: (B. P. 1, fo. 391.) The draining privilege."

I furthermore certify that the mortgage recorded in B. 84, fo. 493, of this office, against the said property in the name of T. P. May, for the sum of $25,000, int's, costs, etc., has been duly cancelled and erased from said book.

N. O., July seventh, 1870.
[SEAL.] (Signed) C. DARCANTEL, *D'y.*

STATE OF LOUISIANA,
City of New Orleans:

I, Andrew Hero, j'r, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, do hereby certify that the within and foregoing seventeen pages of writing contain a true and correct copy of the original act of sale, proces-verbal and conveyance and mortgage certificates referred to in and made part of an act of tender and default, relative thereto, of record and extant in my notarial archives, under date of the second and seventh days of July, A. D. eighteen hundred and seventy.

As witness my hand & seal at New Orleans, this thirteenth day of February, A. D. eighteen hundred & seventy-one.
[SEAL.] ANDREW HERO, J'R, *Not. Pub.*

[Rev. stamp, 5 c.]

70 And did then and there also produce, as a witness, the said Andrew Hero, j'r, who, being sworn, testified that all of the matters, allegations, and statements in said proces-verbal contained, were true, and occurred as therein set forth.

And in order to show that the said defendant had been notified that said property would, on account of his default and non-compliance with the terms of said adjudication and sale thereof to him, the said defendant, be exposed for sale again at his, defendant's risk, and on his account, the plaintiff produced and read the following written communication, which was admitted to have been received and read by the de-

fendant at or near the time of its date, as shown in said letter, which is in the words and figures following:

(Copy.)

NEW ORLEANS, *July 26th*, 1870.

GEORGE JONAS, Esq.:

DEAR SIR: You will please take notice that, by direction of the
71 Solicitor of the Treasury of the United States, I have advertised, and shall proceed to sell, by public auction, on the 6th day of August next, at the St. Charles Auction Exchange, for your account and risk, to the highest bidder, without reserve, the property situated at the corner of Canal and Marais street, in the first district of this city, known as the "May property," the same that was adjudicated to you by public auction, by me, on the 31st day of May last, for the price and sum of $30,000, on the terms and conditions advertised and announced at the time of sale.

I am directed to proceed with the sale according to law, the Government intending to look to you to make up whatever difference there may be between the price at which the property was adjudicated on the 31st May and the price at which it may be sold on the 6th August next, & for all charges and expenses which may be incurred in consequence of your refusal to comply with the adjudication to you.

I have the honor to be, very respectfully,

J. B. WALTON,
Auctioneer.

P. S.—I enclose copy of advertisement.

72 And to show the manner in which the said second sale of said property, as set forth in said plaintiff's petition, was advertised, the said plaintiff then read in evidence to the jury the following advertisement, which is in the words and figures following, to wit:

Second sale for account & risk of Geo. Jonas, by J. B. Walton. Sale without reserve. For account and risk of George Jonas.

Elegant mansion on Canal street, and three lots of ground, corner of Marais street, in the first district, late residence of Thomas P. May, esq. By order of the Solicitor of the Treasury of the United States Government, and for account and risk of George Jonas. By J. B. Walton, auctioneer. Office No. 162 Common street.

On Saturday, August 6th, 1870, at 12 o'clock m., at the St. Charles Auction Exchange, in the basement of the St. Charles Hotel, by order of the Solicitor of the Treasury of the United States Government, and for account and risk of George Jonas, the former purchaser, to
73 whom the property was adjudicated on the 31st of May, 1870, and who has failed, after legal default, to comply with the terms and conditions of the adjudication aforesaid, will be sold by auction, to the highest bidder, the following-described valuable property, to wit:

That elegant residence, situated at the corner of Canal and Marais streets, first district, built by Mr. Armand Heine for his own occupation, and subsequently owned and occupied by Thomas P. May, esq. The buildings are of modern construction and architecture, and contain

all the conveniences and improvements in use in the best dwellings of the present day. They embrace spacious halls, drawing-rooms, parlors, dining-saloon, library, bed-rooms, closets, baths, servants' apartments, etc., all finished in the best style, without regard to cost.

The property embraces three lots of ground in the square bounded by Canal, Gasquet, Marais, and Villeré streets, designated by the Nos. 1, 2, & 3, on a plan drawn by Joseph Pilié, surveyor, on the 3d day of May, 1839, deposited in the office of Lucien Hermann, late a notary in this city, measuring each 21 feet 3 inches and 6 lines front on Canal street, by a depth, between parallel lines, of 127 feet 10 inches and 5 lines,
74 all American measure, lot No. 1 forming the corner on Canal and Marais streets, together with the use of an alley in the rear of said lots, opening on Marais street, common to said lots, and being 10 feet wide.

This property, from its elegant construction, and convenient and accessible location upon Canal street, presents an unusual opportunity to secure a superior residence.

TERMS AND CONDITIONS.—One-third cash, in United States Treasury notes; the remainder in the notes of the purchaser to his own order, and by him endorsed, payable at one and two years, in equal amounts, bearing interest at eight per cent. per annum, from date until paid, and special mortgage and vendor's privilege upon the property until final payment; the mortgage to embrace the clause of five per cent. for attorney's fees in case of suit to recover payment of the notes, or any part thereof, should they not be punctually paid at maturity; the buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government, and to be kept insured until final payment, and the policies to be transferred to the vendor.

Act of sale before A. Hero, jr., not. pub., at the expense of the purchaser, including all stamps required by law.

75 And to further show the time and manner of the said second sale of said property, on account and risk of said defendant, as well as the price realized for said property at said second sale, the said plaintiff did produce and read to the jury the following proces-verbal of said second auction sale made by the said J. B. Walton, auctioneer as aforesaid, which was and is in the words and figures following, to wit:

Sale by auction, by J. B. Walton, auctioneer, by order of the Solicitor of the Treasury of the United States Government, and for account and risk of George Jonas.

I, James B. Walton, a duly licensed auctioneer in & for the parish of Orleans & city of New Orleans, do hereby certify that, by virtue & in pursuance of an order of the Solicitor of the Treasury of the United States Government, and after the regular and legal advertisements had been published in the New Orleans Republican, the official journal of the parish of Orleans, published in this city, on the 20th, 24, & 30th days of July, and on the 6th day of August, inclusive, 1870; & in the New Orleans Times, a newspaper published in this city, on the 21st, 24th,
76 & 30th days of July, and on the 6th day of August, 1870, I did, on Saturday, the sixth day of August, 1870, at 12 o'clock m., at the Saint Charles Auction Exchange, in this city, proceed to sell by public auction, for account and risk of George Jonas, the former purchaser, to whom the property was adjudicated on the 31st day of May,

1870, and who has failed, after legal default, to comply with the terms & conditions of the adjudication aforesaid, the following described property, to wit:

Three lots of ground, with the buildings and improvements thereon, corner of Canal & Marais streets, in the first district of this city, in the square bounded by Canal, Gasquet, Marais, & Villeré streets, designated by the Nos. 1, 2, & 3, on a plan drawn by Joseph Pilié, surveyor, on the 3d day of May, 1839, deposited in the office of Lucien Hermann, late a notary in this city, measuring each 21 feet 3 inches 6 lines front on Canal street, by a depth each, between parallel lines, of 127 feet 10 inches 5 lines, all American measure, lot No. 1 forming the corner of Canal & Marais streets, together with the use of an alley in the rear of said lots, opening on Marais street, common to said lots, and being 10 feet wide.

77 The improvements on these lots consist of a two-story & attic brick residence, and two-story brick back buildings, etc., known as the late residence of Thomas P. May, esq.

To John G. Duffield, he being the last & highest bidder, for the price and sum of twenty-one thousand five hundred dollars.

TERMS & CONDITIONS.—One-third cash, in U. S. Treasury-notes; the remainder in the notes of the purchaser, to his own order, and by him endorsed, payable at one and two years, in equal amounts, bearing interest at eight per cent. per annum from date until paid, & special mortgage and vendor's privilege upon the property until final payment; the mortgage to embrace the clause of five per cent. for attorney's fees in case of suit to recover payment of the notes or any parts thereof, should they not be punctually paid at maturity; the buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government, & to be kept insured until final payment, & the policies to be transferred to the vendor.

Act of sale before A. Hero, j'r, notary public, at the expense of the purchaser, including the U. S. revenue stamps.

J. B. WALTON, *Auctioneer.*

78 And then and there also produced the files of the newspapers named in said proces-verbal to establish that the said sale was advertised in manner and form as in said proces verbal stated.

And the said plaintiff did then and there also produce as a witness the said auctioneer, J. B. Walton, who, being duly sworn, did depose and state that the matters, facts, and allegations set forth in said proces-verbal were and are true as therein set forth, and the said plaintiff also produce and show and give in evidence the files of the said newspapers named in said proces-verbal, to show the advertisement of said second sale, as set forth in said proces-verbal.

And to show and prove that the said John G. Duffield, the adjudicatee of said second sale, made at the risk of said defendant, did comply with the terms of said last-mentioned adjudication, and that said sale became complete, the plaintiff produced and read in evidence to the jury the duly certified copy of the deed and conveyance of said property to the said John G. Duffield, which, with the certificates attached, is and was in the words and figures following, to wit:

79 *Sold by auction, by J. B. Walton, auctioneer, by order of the Solicitor of the Treasury of the United States Government, & for account & risk of George Jonas.*

I, James B. Walton, a duly licensed auctioneer in and for the parish of Orleans & city of New Orleans, do hereby certify that, by virtue &

in pursuance of an order of the Solicitor of the Treasury of the United States Government, and after the regular and legal advertisements had been published in the New Orleans Republican, the official journal of the parish of Orleans, published in this city on the 20th, 24th, & 30th days of July, and on the 6th day of August, inclusive, 1870;* and in the New Orleans Times, a newspaper published in this city, on the 21st, 24th, & 30 days of July, and on the 6th day of August, 1870,*

This reference approved. F. A. WOOLFLEY. *Clerk.*

I did, on Saturday, the sixth day of August, 1870, at 12 o'clock m., at the Saint Charles Auction Exchange, in this city, proceed to sell, by public auction, for account & risk of George Jonas, the former purchaser, to whom the property was adjudicated on the 31st day of May, 1870, and who has failed, after legal default, to comply with the terms & conditions of the adjudication aforesaid, the following described property, to wit:

Three lots of ground, with the buildings and improvements thereon, corner of Canal and Marias streets, in the first district of this city in the square bounded by Canal, Gasquet, Marias, & Villeré
80 streets, designated by Nos. 1, 2, & 3, on a plan drawn by Joseph Pilié, surveyor, on the 3d day of May, 1839, deposited in the office of Lucien Hermann, late a notary of this city, measuring each 21 feet 3 inches 6 lines front on Canal street, by a depth each, between parallel lines, of 127 feet 10 inches 5 lines, all American measure, lot No. 1 forming the corner of Canal & Marais streets, together with the use of an alley in the rear of said lots, opening on Marais street, common to said lots, & being ten feet wide.

The improvements on these lots consist of a two-story and attic brick residence, & two-story brick back buildings, etc., known as the late residence of Tho's P. May, esq.

To John G. Duffield, he being the last and highest bidder, for the price and sum of twenty-one thousand five hundred dollars.

TERMS & CONDITIONS.—One-third cash, in U. S. Treasury-notes; the remainder in the notes of the purchaser to his own order, & by him endorsed, payable at one and two years, in equal amounts, bearing interest at eight per cent. per annum from date until paid, & special mortgage & vendor's privilege upon the property until final payment; the mortgage to embrace the clause of five per cent. for attorney's
81 fees, in case of suit to recover payment of the notes or any parts thereof should they not be punctually paid at maturity; the buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government, & to be kept insured until final payment, & the policies to be transferred to the vendor.

Act of sale before A. Hero, jr., not. pub., at the expense of the purchaser, including U. S. rev. stamps.

J. B. WALTON, *Auctioneer.*

NOTICE.—The register of conveyances will not be responsible for the record of any acts of sale inscribed in book No. 17 of this office, the same having been lost or stolen previous to his taking possession of the office of register of conveyances.

STATE OF LOUISIANA,
Parish of Orleans:

OFFICE OF THE REGISTER OF CONVEYANCES,
New Orleans, 5th September, 1870.

The undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, hereby certifies that, according to the

records of this office, it does not appear that United States of America has alienated the following property, to wit:

82 Three lots of ground, with buildings, etc., situated in the 1st dist. of this city, and designated by the Nos. 1, 2, & 3, of square bounded by Gasquet, Canal, Marais, and Valleré streets. Lots 1 & 2 measure each 21′ 3″ 6‴ front on Canal street, by 116′ 10″ 5‴ deep, between parallel lines, lot No. 1 forms corner of Canal & Marais streets; lot No. 3 measures 21′ 3″ 6‴ front on Canal street, by 127′ 10″ 5‴ deep, between parallel lines, with the use of an alley opening on Marais street, in the rear of said lots, and measuring 10′ wide, and is common to said lots.

Acquired the 15th of May, 1867. Recorded in book 92, folio 461.

[SEAL.] C. B. FISH, *D'y.*

[5-c. rev. stamp, cancelled.]

[5c. R. S. cancelled.]

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of N. Orleans, State of Louisiana, certifies that, in the records of this office, there is no other mortgage standing in the name of the United States of America and recorded against three lots of ground, with buildings, etc., in 1st dist., desig. by Nos. 1, 2, & 3, in square bounded by Gasquet, Canal, Marais, & Valleré st's. Lots 1 & 2 measure each 21′ 3″ 6‴ front on Canal street, by 117′ 10″ 5‴, bet. par'l lines, lot No.

83 1 forming corner of Canal & Marais street; lot No. 3 meas. 21′ 3″ 6‴ on Canal street, by 127′ 10″ 5‴, bet. par'l lines, with the use of an alley opening on Marais st. in rear of said lot, meas. 10 feet wide, & common to said lots, etc., than, (B. P., 1 fo., 391,) the draining privilege.

I further certify that the mortgage recorded in B. 84, fo. 493, of this office, against said property, in the name of T. P. May, for the sum of $25,000, int., costs, etc., has been duly cancelled & erased from said books.

N. O., September fifth, 1870.

[SEAL.] C. DARCANTEL, *D'y.*

STATE OF LOUISIANA,
City of New Orleans:

I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, do hereby certify that the above and foregoing contains a true and correct copy of the original process-verbal and mortgage and conveyance certificates annexed to an act of sale from the United States unto John G. Duffield, of the property therein mentioned, and extant and of record in my current notarial records.

As witness my hand & seal, at New Orleans, this fourteenth of February, 1871.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

[5-c. rev. stamp, cancelled.]

84 [$21.50 U. S. int. rev. stamp, cancelled.]

This indenture, made and entered into, in duplicate, this 27th day of August, A. D. one thousand eight hundred and seventy, between Everett C. Banfield, Solicitor of the Treasury of the United States, duly appointed and qualified as such, and herein acting in such capacity for

and on behalf of the United States of America, party of the first part, and John Greenwood Duffield, of the city of New Orleans, State of Louisiana, party hereto, of the second part:

Whereas, by an act passed before Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, on the fifteenth day of May, eighteen hundred and sixty-seven, Thomas P. May, of the city of New Orleans, State of Louisiana, did transfer, assign, and set over unto the United States of America, in part liquidation of certain indebtedness, due by him unto the said United States of America, all that certain property situate at and forming the corner of Canal and Marais streets, in the first district of said city of New Orleans hereinafter particularly described.

Registered in conveyance office in B. 98, folio 137. New Orleans, September 7th, 1870. (Rec'd:) B. 90, fo. 505. (S'g'd) C. B. FISH, *D'y.*

And whereas, under the provisions of section 9 of an act of the
85 Congress of the United States of America, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," approved March 3d, 1863, the said Solicitor of the Treasury caused the above-mentioned property to be exposed for sale at public auction, at the St. Charles Auction-Exchange, on St. Charles street, between Gravier and Common streets, in the said city of New Orleans, State of Louisiana, on Tuesday, the thirty-first day of May, 1870, at twelve o'clock m., by James B. Walton, a duly licensed auctioneer of said city of New Orleans, after having first given due and legal notice of the time, place, and conditions of sale by advertisements thereof, in English, in the New Orleans Republican, a newspaper published in said city of New Orleans, and the official journal of the United States, on the twenty-seventh day of February; the sixth, thirteenth, twentieth, and twenty-seventh days of March; the third, tenth, seventeenth, and twenty-fourth days of April; and the first, third, eighth, and fifteenth to thirty-first days of May, eighteen hundred and seventy; and by advertisements thereof in French, in the New Orleans Bee, a newspaper published in said city of New Orleans, on the first,
86 sixth, thirteenth, twentieth, and twenty-seventh days of March, and the third, tenth, seventeenth, and twenty-fourth days of April, eighteen hundred and seventy.

And whereas, at said public sale, the above-mentioned and hereinafter described property was adjudicated unto George Jonas, of said city of New Orleans, as the last and highest bidder thereon, for the price and sum of thirty thousand dollars, payable upon the following terms and conditions, viz: One-third cash, in United States Treasury notes; the remainder in the notes of the purchaser, to his own order and by him endorsed, payable at one and two years in equal amounts, bearing interest at eight per cent. per annum from date until paid, and special mortgage and vendor's privilege upon the property until final payment; the mortgage to embrace the clause of five per cent. attorney's fees in case of suit to recover payment of the notes, or any part thereof, should they not be punctually paid at maturity; the buildings to be insured by the purchaser to the satisfaction of the agent of the United States Government, and to be kept insured until final payment of said notes, and the policies to be transferred to the vendor.

87 And whereas said George Jonas failed to comply with the terms of said adjudication, and was duly placed in default, as will appear by reference to the customary and legal notices and act of default of record in the office of said notary, Andrew Hero, jr., under date of the second and seventh days of July last past, 1870; and thereupon, at

the end of ten days, and after the customary notices, as well as after advertisements in the New Orleans Republican, a newspaper published in said city of New Orleans, and the official journal of the United States, on the tenth, twenty-fourth, and thirtieth days of July, and on the sixth day of August, eighteen hundred and seventy; and advertisements thereof in the New Orleans Times, a newspaper published in said city of New Orleans, on the twenty-first, twenty-fourth, and thirtieth days of July, and on the sixth day of August, eighteen hundred and seventy, the said property was again exposed for public sale on Saturday, the sixth day of August, eighteen hundred and seventy, at the aforesaid St. Charles Auction Exchange, in said city of New Orleans, for account and risk of said George Jonas, and upon the same terms and con-
88 ditions as at the aforesaid adjudication unto him, said George Jonas, when the same was adjudicated unto John Greenwood Duffield, of said city of New Orleans, as the last and highest bidder thereon, for the price and sum of twenty-one thousand five hundred dollars, payable upon the terms and conditions hereinbefore written and specified.

Now this indenture witnesseth that, in confirmation of the said adjudication, and in order to give unto the said John Greenwood Duffield an authentic title to the said property, and for and in consideration of the aforesaid price and sum of twenty-one thousand five hundred dollars, whereof seven thousand one hundred and sixty-six dollars and sixty-six and two-thirds cents have been paid cash in United States Treasury notes at or before the ensealing and delivery of these presents by the said party of the second part unto the said party of the first part, and the residue thereof is payable in two certain promissory notes for the sum of seven thousand one hundred and sixty-six dollars and sixty-six and two-thirds cents each, drawn by said John Greenwood Duffield to the order of, and endorsed by, himself, dated at New Orleans, Louisiana, the sixth day of August, eighteen hundred and
89 seventy, the day of said adjudication, and made payable at one and two years respectively after date, with interest at the rate of eight per cent. per annum from date until final payment, the receipt of which said cash and notes is hereby acknowledged by the said party of the first part, as Solicitor of the Treasury as aforesaid, and in his official capacity as such hath granted, bargained, sold, aliened, remised, released, conveyed, confirmed, and assigned, and by these presents grants, bargains, sells, aliens, remises, releases, conveys, confirms, and sets over unto the said party of the second part, said John Greenwood Duffield, his heirs and assigns, forever, all and singular the above-mentioned and referred-to property, which is designated and described as follows, viz:

Three certain lots of ground, together with the buildings and improvements thereon, and all the rights, ways, privileges and appurtenances thereunto belonging, or in anywise appertaining, situate in the first district of New Orleans, in the square bounded by Gasquet, Canal, Marais, and Villeré streets, designated by the numbers one, two, and three, on a plan drawn by J. Pilié, surveyor, on the 3d May, 1839, deposited in the office of L. Hermann, late a notary in this city; lots
90 Nos. one and two measure each twenty-one feet three inches and six lines front on Canal street, by a depth of one hundred and seventeen feet ten inches and five lines, between parallel lines, lot No. one forming the corner of Canal and Marais streets; lot No. three measures twenty-one feet three inches and six lines front on Canal street, by one hundred and twenty-seven feet ten inches and five lines

in depth, between parallel lines, American measure, together with the use of an alley, opening on Marais street, in the rear of said lots, measuring ten feet wide and common to said lots; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interests, property, possession, claim, and demand whatsoever, as well in law as in equity of the said United States of America, of, in, and to the same and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained, and de-
91 scribed premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use and behoof forever. It is agreed—

1st. That the aforedescribed property and appurtenances are to remain mortgaged and hypothecated, as well as encumbered with a vendor's lien and privilege in favor of the United States of America, and of any and all such person or persons as may hereafter become the owner or owners of said notes, or either of them, until the full and final payment of the aforesaid notes in capital and interest, the said John G. Duffield hereby binding himself and his heirs not to alienate, deteriorate or encumber the aforesaid and herein conveyed property to the prejudice of these presents.

2nd. That he, said John Greenwood Duffield, and his heirs and assigns, shall and will cause all and singular the buildings and improvements on the lots of ground aforesaid to be insured and kept insured against the risk of fire by one of the insurance companies of the city of New Orleans, in the sum of fifteen thousand dollars until the full and final payment of the afore-described notes, and to transfer and deliver unto

the said party of the first part the policy or policies of such in-
92 surance or insurances; in default whereof said party of the first part, and any and all holders of said notes, is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said John Greenwood Duffield, but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of said buildings.

3rd. That, in the event of the said notes, or either of them, not being punctually paid at maturity, it shall be lawful for, and he, the said John G. Duffield, hereby authorizes the said party of the first part, or any other holder or holders thereof, to cause all and singular the property hereinbefore described and herein mortgaged, to be seized and sold under executory process (issued by any competent court) without appraisement, to the highest bidder, payable cash, the said John G. Duffield hereby expressly dispensing with all and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement and of all laws or parts of laws relative to the appraise-

ment of moveable or immoveable effects, etc., seized and sold
93 under executory or other legal process: hereby confessing judgment in favor of said party of the first part, and such person or persons who may be the holder or holders of said notes or either of them, for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

4th. That the said John G. Duffield, by these presents, binds and obligates himself and his heirs to pay and re-imburse unto said party of the first part, and such person or persons as may be the holder or hold-

ers of said notes or either of them, all such lawyers' or attorneys' fees, together with all such costs, charges, and expenses as said party of the first part, or any such holder or holders, shall or may incur or pay in the event of non-payment of said notes at maturity, said attorneys' fees, however, to be fixed at five per cent. on the amount in suit.

And this Deed of Trust is made upon the further condition that, in order to secure the faithful performance of the foregoing obligations, and the reimbursement and payment of all premium or premiums as shall be paid by the said party of the first part or any holder or holders of the aforesaid notes, in causing insurance to be effected, on default of said John G. Duffield, his heirs or assigns, as aforesaid, he, the said John G. Duffield, by these presents, further specially mortgages and hypothecates the hereinbefore-described property, unto and in favor of said party of the first part and all holders of the said notes or either of them.

In witness whereof the said Everett C. Banfield, Solicitor of the Treasury, as aforesaid, has hereunto set his hand and caused his seal of office to be affixed, the day and year first above mentioned; and the said John G. Duffield has hereunto set his hand and seal, the twenty-seventh day of August, A. D. one thousand eight hundred and seventy.

(Original signed.)

(SEAL OF SOLICITOR OF THE TREASURY.)

E. C. BANFIELD.
Solicitor of the Treasury.
JOHN G. DUFFIELD.

Signed, sealed, & delivered by Everett C. Banfield, Solicitor of the Treasury, in presence of—
WM. V. ARCHER.
WM. H. CLARKSON.
CHARLES NETTLETON.

Signed, sealed, and delivered by Jno. G. Duffield, in presence of us—
JNO. P. VAEIN.
ROGER P. BOYLE.
ANDREW HERO, JR. *Not. Pub.*

UNITED STATES OF AMERICA.
State of New York, City and County of New York:

Be it remembered that, on this twenty-seventh day of August, A. D. one thousand eight hundred and seventy, before the undersigned, a commissioner of the State of Louisiana, within and for the city of New York, in State of New York, duly commissioned and authorized to take the acknowledgment and proof of execution of deeds and other instruments of writing, and to take the testimony, administer oaths and affirmations, etc., to be recorded or used in said State of Louisiana, personally came and appeared Everett C. Banfield, Solicitor of the Treasury of the United States, and executed the within and foregoing conveyance in such capacity, for and on behalf of the United States of America, in my presence and in that of the two witnesses whose names are thereto subscribed, and thereupon acknowledged that he executed the same as his act and deed, in such capacity of Solicitor of the Treasury, and for and on behalf of the United States of America, on the day and year and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal of office, as commissioner aforesaid, at my office in said city of New York, the day and date above-written.

[SEAL.] (Sig'd) WM. V. ARCHER.
Commissioner for Louisiana in New York.

STATE OF LOUISIANA,
City of New Orleans:

Be it remembered that, on this the sixth day of September, A. D. one thousand eight hundred and seventy, before me, the undersigned, a notary public in and for the city of New Orleans, parish of Orleans, State of Louisiana, personally appeared the within-named John Greenwood Duffield, and executed the within and foregoing conveyance, in my presence, and in that of two witnesses, whose names are thereto subscribed as such, and thereupon acknowledged that he executed the same as his act and deed, for the considerations, uses, and purposes therein mentioned.

And I, the said notary, do further certify that the two promissory notes, described and given in said conveyance, were by me paraphed "Ne varietur," for identification therewith.

In faith whereof I grant these presents under my hand and seal as notary public, as aforesaid, in the city of New Orleans, on the
97 sixth day of September, A. D. one thousand eight hundred and seventy.

[SEAL.] (S'g'd) ANDREW HERO, JR., *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that, on this sixth day of September, in the year of our Lord, one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth, before me, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared John Greenwood Duffield, of this city, who presented to me, said notary, the above and foregoing nine and a half pages of writing, being an act of sale of certain property in this city, by the United States of America unto him said appearer, executed for and on behalf of said United States by Everett C. Banfield, Solicitor of the Treasury, under date of the twenty-seventh day of August last past, before W'm V. Archer, a commissioner of this State in the city of New York,
98 State of New York, and executed by him, said appearer, before me, notary, on this day, which said instrument he, said Duffield, requested me to record and deposit among my notarial archives to serve and avail as occasion shall or may require.

Wherefore by these presents the said act of sale or instrument of writing is deposited with and made part of my notarial records.

Thus done and recorded at my office in said city of New Orleans, in the presence of Messrs. George Cenas and Paul A. Conaud, competent witnesses, both of this city, who hereunto sign their names with the said appearer, and me, said notary, on the day and year aforesaid.

(Original signed) JOHN G. DUFFIELD.
GEO. CENAS.
P. A. CONAUD.
ANDREW HERO, JR.,
Not. Pub.

STATE OF LOUISIANA,
Parish of Orleans:

I, Andrew Hero, jr., a notary public, in and for this city and parish of Orleans, duly commissioned and qualified, do certify the foregoing and

within as being a true and correct copy of the original, deposited and of record in my notarial records.

As attest my hand & seal as notary public as aforesaid, at New
99 Orleans, this 11th February, A. D. 1871.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

[5-cent rev. stamp canceled.]

And the said plaintiff having produced witnesses who, by their testimony given to the jury, established that the items of charges for auctioneer and notary's fees, as stated in plaintiffs' petition were correct as therein stated, and the same having been by the said defendant's counsel admitted to be true and correct in amount as stated in said petition, the plaintiff rested its case and the same was submitted to the jury, and, on the part of the plaintiff, it was insisted that, under the evidence as above set forth and the law, the plaintiff was entitled to and should recover from the defendant as prayed for in plaintiffs' petition.

On the part of the defendant, among other things, it was contended that the said defendant had never legally put in default for non-compliance with the terms of the adjudication, for that it did not appear that the written evidence of the approval of the Secretary of the Treasury of the sale of said property, nor either endorsed on the said act of
100 sale by the Solicitor of the Treasury, to Jonas, the defendant, set forth in the notarial proces verbal of tender and default above set forth, or in any manner, in any written form, tendered to the said defendant before he was placed in default, and the sale on the risk and account of the defendant was made; and it was further contended by said defendant's counsel, that such written evidence of the approval of the said Secretary of the Treasury was an indispensable muniment of title, and that, for that reason, no sufficient deed or evidence of title had ever been tendered to the defendant, Jonas, and therefore the plaintiff was not entitled to recover, as prayed for in its petition; but, on the contrary thereof, there should be a verdict and judgment for the defendant.

And, after argument on the part of the plaintiff as well as the said defendant, and before the jury retired to deliberate on its verdict, the said plaintiff did then and there, by its counsel, pray the court to deliver to the said jury as its opinion and judgment of the law relating to the issue so made in this cause, the following nine several separate charges presented to the court then and there in writing, numbered from 1 to 9 inclusive.

101 U. S. circuit court.

UNITED STATES *vs.* GEORGE JONAS. } No. 6265.

1st. The United States, by means of the act of conveyance executed by Thomas P. May and wife, produced and read in evidence to the jury, acquired full legal documentary title to the property described in plaintiffs' petition, and had full power and authority to convey the same to any purchaser, with full legal title, and was not incapacitated in law, in that respect, in any particular.

2nd. The adjudication of the property, described in plaintiffs' petition, to the defendant, at the auction-sale thereof, made by J. B. Walton, auctioneer, as shown by his proces verbal of such sale, produced and

read in evidence to the jury, vested the legal title to said property in the said defendant, and he was in law bound to comply with the terms and conditions of such adjudication, so far as the same were to be performed on his part.

102 3rd. By the terms, conditions, and proper construction of the act of Congress establishing the office of Solicitor of the Treasury and defining the duties and powers of such officer, approved May 29, 1830, the power to sell, convey by deed all property received by the United States in payment of any debt due the United States, or in settlement or compromise of any debt or claim due the United States, is vested in the Solicitor of the Treasury alone, and his act or deed of conveyance of any such property is in law a full and complete conveyance of all of the title of the United States in or to such property, and said act of Congress is, in that respect, at this time in full force.

4th. The 9th section of the act of Congress, approved March 3d, 1863, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," does not limit or take away the power of the Solicitor of the Treasury to make and execute
103 to any purchaser of any property acquired by the United States, under judicial proceedings or otherwise in the collection of debts, and a deed of conveyance, in due form of law, executed by the Solicitor of the Treasury, will convey to the purchaser of any such property all of the title of the United States, and a deed so executed is full and complete evidence in law of the title so conveyed.

5th. By the terms and just legal constructions of the act entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," approved March 3d, 1863, the Solicitor of the Treasury is the sole judge of the propriety of the sale of any property acquired by the United States, under judicial proceedings or otherwise in the collection of debts, and may cause the sale of any such property upon such terms "as may, in his judgment, be most advantageous to the public interest," without consulting the Secretary of the Treasury, or obtaining his approval thereof.

That, by the terms or said statute, he is only required to act
104 with the approval of the Secretary of the Treasury, in case he seeks to rent such property, instead of selling the same.

6th. That, by the act of sale of the property described in plaintiffs petition, executed by Thomas P. May and wife, by which the United States acquired title, which said act has been produced and read in evidence to the jury, it appears that said property was acquired by the United States in the collection of a debt due the United States, and therefore the Solicitor of the Treasury had full, lawful, and competent power and authority to cause the same to be sold, and to execute a deed conveying title to the purchaser, and that the act or deed of sale to the defendant, Jonas, executed by the Solicitor of the Treasury, and produced and read in evidence to the jury, was a full conveyance of all the title of the United States in and to said property to the defendant, and was, on the part of the United States, a full compliance with the terms of the adjudication of said property to the said defendant at the auction sale to him, and the defendant could raise no valid legal

105 objection or excuse for non-compliance with the terms of the adjudication to him on account of any informality or insufficiency either in form of the act of sale executed by the Solicitor, or by reason of any want of authority on the part of the Solicitor of the Treasury to execute such act of sale.

7th. The tender of the deed executed by the Solicitor of the Treasury to the defendant, as shown in the evidence produced and read to the jury, was a full compliance, on the part of the United States, with the terms and conditions of the adjudication to Jonas, the def't, at the auction sale, as shown by the auctioneer's proces-verbal; and it is no legal objection to said act of sale or conveyance that it was not signed by the Secretary of the Treasury, or that the written consent or approval of the Secretary of the Treasury to the sale or transfer of said property does not appear endorsed on or appended to said act of conveyance; and the United States was not required in law to tender to said defendant, as a part of the proof of his title to said property, the written approval or consent of the Secretary of the Treasury to said sale or transfer of said property, in any form, in order to convey a complete title to said defendant.

106 8th. The written consent or approval of the Secretary of the Treasury of the sale or transfer of property of the United States acquired under judicial proceedings or otherwise in the collection of debts due to the United States, made by the Solicitor of the Treasury, under and by virtue of the act of Congress in such case provided, is not an evidence or muniment of title which the purchaser of any such property can demand and require as necessary evidence to vest in such purchaser a complete legal title.

9th. If the act of conveyance from the United States to the said defendant, Jonas, tendered to Jonas, the def't, in accordance with the terms and conditions of the auctioneer's adjudication to Jonas, was sufficient to convey a good title to Jonas, then and in that case the proceedings taken to put the defendant, Jonas, in default for non-compliance with the terms of the auctioneer's adjudication, as shown in the proces-verbal of Andrew Hero, jr., notary public, produced and read in evidence to the jury, were sufficient in law to put the said defendant in default
107 as required by the law of the State of Louisiana, which governs in that respect, and the second sale was legally made at the risk of and on account of the said Jonas, def't, and in form and manner of sale as well as in the time within which said second sale was made, and the form, time, and sufficiency of the advertisement of such sale was governed and controlled by the law of Louisiana in force at that time.

Whereupon the said judge did then and there give to the said jury in charge the said first instruction as prayed by said plaintiff, that is to say, the said instruction numbered 1, but did then and there refuse to instruct the jury as requested in said written instructions numbered 2, 3, 4, 5, 6, 7, 8, & 9, to which said refusal to instruct and charge the jury as requested in each of said several instructions as above set forth, the said plaintiff did then and there except as to each of the instructions so refused as aforesaid.

And thereupon the said judge did proceed to instruct and charge the said jury, orally, as follows:

108 "The plaintiff seeks to recover from the defendant the difference between the price for which the property described in plaintiff's petition was adjudicated to him at auction sale, and the price obtained for the same property at a second auction sale made to another person, at the alleged risk and on account of Jonas, the defendant, which said sale was made for the alleged reason that the defendant had refused to comply with and perform the conditions of the adjudication made to him at the first sale.

"In order to lawfully authorize the second sale at the risk and on account of the defendant, and to affect him with the result of that sale in such a manner as to render him liable to pay the plaintiff any loss or diminution of price resulting from the second sale, it must be shown by the evidence submitted to you that Jonas, the defendant, was legally put in default for non-compliance with the terms of the adjudication at the auction sale to him. In order to put the defendant legally in default in such manner as to warrant and authorize a second sale at his risk and on his account, it was the duty of the United States to tender to the defendant a deed of conveyance made by an officer or
109 officers of the United States, who had undoubted authority to convey the property in full title to the defendant. It was also indispensable that the deed of conveyance so tendered should, on its face, or by means of documents attached thereto, as tendered to the defendant therewith, show a full, clear, and complete conveyance of the title of the United States, and show that the sale had been made with the full consent and approval and authorization of all of the officers of the United States whose assent, approval, or authorization is by law necessary to the legal sale of property acquired by the United States under judicial proceedings or otherwise in the collection of debts due the United States.

"It appears, by the tenor of the notarial act of sale, from Thomas P. May and wife to the United States, read in evidence, that the property in question was acquired by the United States in part satisfaction of a debt due the United States.

This reference and addition approved.
F. A. WOOLFLEY, *Clerk.*

"The manner in which property so acquired shall be disposed of is provided in the 9th section of an act of Congress entitled 'An act to prevent and punish frauds upon the revenue, and to provide for the more speedy collection of claims in favor of the United States, and for other purposes,' approved March 3d, 1863.

"SEC. 9. And be it further enacted that, for the purpose of real-
110 izing as much as may properly be done from unproductive lands, and other property of the United States acquired under judicial proceedings, or otherwise, in the collection of debts, the Solicitor of the Treasury be, and he is hereby, authorized, with the approval of the Secretary of the Treasury, to rent, for a period not exceeding three years, or sell any such lands, or other property, at public sale, after advertising the time, place, and conditions of such sale for three months preceding the same, in some newspaper published in the vicinity thereof, in such manner and upon such terms as may, in his judgment, be most advantageous to the public interests.

"The Solicitor of the Treasury, under the authority conferred by the act of Congress, caused the property in question to be put up for sale, and it was adjudicated to Jonas, the defendant, for the price of thirty thousand dollars. It is urged that the defendant failed to comply with this adjudication. On the part of the defendant, it is contended that

the defendant was never put in default for non-compliance with the adjudication, for the reason that no proper deed of conveyance
111 of the property sold was ever tendered by the United States to the defendant.

"It is urged that the act of conveyance tendered to Jonas, the defendant, as shown in the notary's proces-verbal of tender and default, was defective in that, by law, the consent and approval of the Secretary of the Treasury was necessary before the Solicitor of the Treasury could acquire authority to sell and convey the property in question; that such written consent and approval was an indispensable muniment of title, and, in order to make a complete conveyance, such consent and approval in writing should have been tendered to the defendant, either endorsed on or appended to said act of conveyance, or have been contained in some document in writing tendered to the defendant with the deed of conveyance executed by the Solicitor of the Treasury.

"I charge you that the position taken and the law as urged by the defendant is correct.

"That the consent and approval of the Secretary of the Treasury is necessary to authorize the sale and conveyance of property acquired by the United States under judicial proceedings or otherwise in the collection of debts; without such consent the Solicitor of the Treas-
112 ury is wholly without authority to sell said property. Such written consent of the Secretary of the Treasury is a muniment of title which the purchaser of this class of property has in law a right to demand. Without it he is not given a complete title—such a title as he has a right to demand.

"Wherefore, I charge you that, unless you find from the evidence that the deed of conveyance of the property in question executed by the Solicitor, tendered by the United States to the defendant, Jonas, at the time when it was tendered to him, in order to put him in default for non-compliance with the adjudication to him, at the first auction sale, bore upon its face, or by means of papers connected therewith, written proof certain and patent to the defendant, that the Secretary of the Treasury had, in accordance with section 9 of the act of March 3d, 1863, just read to you, approved and authorized the sale of the property described in the plaintiff's petition at auction by the Solicitor of the Treasury, then no such deed of conveyance was tendered to the defendant as would convey to him a complete and undoubted title, and the defendant was not bound to accept and take such deed as a conveyance,
113 but was in law protected in refusing to accept the same as a conveyance of title to him, and therefore was never in law so put in default for non-compliance with the terms of the adjudication to him of the auction sale as to give the plaintiff any legal right or authority to sell said property at the risk and on account of the defendant, and, therefore, is not responsible for and cannot be compelled to pay loss in price resulting from the second sale.

Whereupon the said plaintiff, by its attorney, did then and there except to the ruling of the court, and to the said charge so orally given to the jury, in so far as the same instructed and charged the jury that any written consent or authorization of the Secretary of the Treasury was or is a necessary muniment of title which should have been tendered to the defendant in order to legally place him in default, and to all of said oral charge, except such portion thereof as recited the evidence before the jury, to which the proposition of law contained in said oral charge refer.

And the cause and the issues thereon were submitted to the jury, with said instructions as aforesaid.

114 And plaintiff did then and there tender to the court this its bill of exceptions, in this behalf, and pray that the same be signed and sealed and made a part of the record in this cause, and it is done accordingly.

[SEAL.] E. H. DURELL, *Judge.*

Judgment.

Circuit court of the U. States, fifth circuit and district of Louisiana.
November term, A. D. 1871.

NEW ORLEANS, *Wednesday, Feb'y 7th,* 1872.

Court met pursuant to adjournment.

Present, the honorable E. H. Durell, district judge.

UNITED STATES } *vs.* GEORGE JONAS. } No. 6265.

By reason of the verdict, and in accordance therewith, it is ordered, adjudged, and decreed, that judgment be entered in favor of defendant, with costs.

Judgment rendered February 7th, 1872.

Judgment signed, February 14th, 1872.

(Signed) E. H. DURELL, *Judge.*

115 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 114 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the United States vs. George Jonas, No. 6265 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 2d day of October, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 2d day of October, A. D. 1872.

E. H. DURELL, *Judge.*

116 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or one of you, between the United States of America, plaintiff, and George Jonas, defendant, a manifest error hath happened to the great damage of the said United States of America, plaintiff, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fourth day of December, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6265. The United States of America, pl'ff in error, versus George Jonas, defendant in error. Writ of error. Filed February 15th, 1872. F. B. Vinot, d'y-cl'k.

117 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to George Jonas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of February, in the year of our Lord one thousand eight hundred and seventy-two.

E. H. DURELL, *Judge.*

118 (Indorsed:) United States circuit court. No. 6265. The United States of America, pl'ff in error, vs. Geo. Jonas, def't in error. Citation.

Marshal's return.

Received Feb. 15, '72, by the U. S. marshal, and on the 17th day of February, 1872, served a copy of the within citation of appeal on George Jonas, by handing the same to him, in person, at the Canal Bank in this city.

Feb'y 17, '72.

S. W. REED,
D'y U. S. Marshal.

On this 17th day of February, 1872, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED.

Sworn to & subscribed before me.

F. B. VINOT,
D'y Cl'k.

(Indorsement on cover:) No. 445. The United States, plaintiffs in error, vs. George Jonas. Louisiana C. C. U. S. Filed 30th October, 1872.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES,
Plaintiffs in Error,
vs.
GEORGE JONAS.

No. 227.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

THE UNITED STATES, *Plaintiffs in Error,* vs. GEORGE JONAS. } No. 227.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action to recover the amount of the loss sustained by the Government from the refusal of the defendant to accept the deed tendered him of a certain parcel of land alleged to have been sold to him by auction at New Orleans, by the United States, and which was afterwards again put up at auction and sold for a less sum than that at which the defendant agreed to take it.

On the 15th of May, 1867, Thomas P. May and wife conveyed to the United States certain parcels of land in New Orleans in part liquidation of a debt due from May to the Government, the conveyance of which is printed in the Record, pp. 15, *et seq.* Afterwards a

portion of this property was sold by auction to the defendant for $30,000, and a deed was tendered to him which is printed in the Record, pp. 22, *et. seq.*, and which recited the sale and that it had been made under the provisions of section 9 of the act of 1863, ch. 76; but it did not appear therein whether the conveyance was approved by the Secretary of the Treasury. The land was subsequently again sold "on account and at the risk of the said George Jonas" for the sum of $21,500, and the deed given, which is printed on pages 32, *et. seq.*, of the Record.

At the trial the counsel for the Government asked the court to give the nine instructions to the jury that are printed on pages 38–40 of the Record. The judge gave the first of said instructions, namely, that the deed from May conveyed full legal documentary title to the property described in plaintiff's petition, but refused the others, and instructed the jury as follows:

"The plaintiff seeks to recover from the defendant the difference between the price for which the property described in plaintiff's petition was adjudicated to him at auction sale, and the price obtained for the same property at a second auction sale made to another person, at the alleged risk and on account of Jonas, the defendant, which said sale was made for the alleged reason that the defendant had refused to comply with and perform the conditions of the adjudication made to him at the first sale.

"In order to lawfully authorize the second sale at the risk, and on account of the defendant, and to affect him with the result of that sale in such a manner as to render him liable to pay the plaintiff any loss or diminution of price resulting from the second sale, it must be shown by the evidence submitted to you that Jonas, the defendant, was legally put in default for

non-compliance with the terms of the adjudication at the auction sale to him. In order to put the defendant legally in default in such manner as to warrant and authorize a second sale at his risk and on his account, it was the duty of the United States to tender to the defendant a deed of conveyance made by an officer or officers of the United States, who had undoubted authority to convey the property in full title to the defendant. It was also indispensable that the deed of conveyance so tendered should, on its face, or by means of documents attached thereto, as tendered to the defendant therewith, show a full, clear, and complete conveyance of the title of the United States, and show that the sale had been made with the full consent and approval and authorization of all of the officers of the United States whose assent, approval, or authorization is by law necessary to the legal sale of property acquired by the United States under judicial proceedings, or otherwise, in the collection of debts due the United States.

It appears, by the tenor of the notarial act of sale, from Thomas P. May and wife to the United States, read in evidence, that the property in question was acquired by the United States in part satisfaction of a debt due the United States.

"The manner in which property so acquired shall be disposed of is provided in the 9th section of an act of Congress entitled 'An act to prevent and punish frauds upon the revenue, and to provide for the more speedy collection of claims in favor of the United States, and for other purposes,' approved March 3, 1863."

"The Solicitor of the Treasury, under the authority conferred by the act of Congress, caused the property in question to be put up for sale, and it was adjudicated to Jonas, the defendant, for the price of thirty thousand dollars. It is urged that the defendant failed to comply with this adjudication. On the part of the defendant, it is contended that the defendant was never put in default for non-compliance with the adjudication, for the reason that no proper deed of conveyance of the property sold was ever tendered by the United States to the defendant.

"It is urged that the act of conveyance tendered to Jonas, the defendant, as shown in the notary's proces-verbal of tender and default, was defective, in that, by law, the consent and approval of the Secretary of the Treasury was necessary before the Solicitor of the Treasury could acquire authority to sell and convey the property in question; that such written consent and approval was an indispensable muniment of title; and, in order to make a complete conveyance, such consent and approval in writing should have been tendered to the defendant, either endorsed on or appended to said act of conveyance, or have been contained in some document in writing tendered to the defendant with the deed of conveyance executed by the Solicitor of the Treasury.

"I charge you that the position taken and the law as urged by the defendant is correct.

"That the consent and approval of the Secretary of the Treasury is necessary to authorize the sale and conveyance of property acquired by the United States under judicial proceedings or otherwise in the collection of debts; without such consent the Solicitor of the Treasury is wholly without authority to sell said property. Such written consent of the Secretary of the Treasury is a muniment of title which the purchaser of this class of property has in law a right to demand. Without it he is not given a complete title—such a title as he has a right to demand.

"Wherefore, I charge you, that, unless you find from the evidence that the deed of conveyance of the property in question executed by the Solicitor, tendered by the United States to the defendant, Jonas, at the time when it was tendered to him, in order to put him in default for non-compliance with the adjudication to him, at the first auction sale, bore upon its face, or by means of papers connected therewith, written proof, certain and patent to the defendant, that the Secretary of the Treasury had, in accordance with section 9 of the act of March 3rd, 1863, just read to you, approved and authorized the sale of the property described in the plaintiff's petition at auction by the Solicitor of the

Treasury, then no such deed of conveyance was tendered to the defendant as would convey to him a complete and undoubted title, and the defendant was not bound to accept and take such deed as a conveyance, but was in law protected in refusing to accept the same as a conveyance of title to him, and therefore was never in law so put in default for non-compliance with the terms of the adjudication to him of the auction sale as to give the plaintiff any legal right or authority to sell said property at the risk and on account of the defendant, and, therefore, is not responsible for and cannot be compelled to pay loss in price resulting from the second sale."

To all which instructions the counsel for the government excepted.

ASSIGNMENTS OF ERROR.

I. That under the act of 1830, establishing the office of the Solicitor of the Treasury, he had power to make this sale independently of the act of 1863, and that therefore his deed would have transferred full title in the premises to the defendant.

II. That if this sale can only be sustained under the act of 1863, then it must be presumed, being the act of a public officer, that it was regularly done, and it is not necessary, in order to give a valid title, that the approval of the Secretary of the Treasury should appear either in the conveyance or otherwise.

ARGUMENT.

By the act of 1830, ch. 153, sec. 1, providing for the appointment of a Solicitor of the Treasury, it is enacted that "the said solicitor shall have charge of all lands

and other property which have been or shall be assigned set off, or conveyed to the United States in payment of debts, and of all trusts created for the use of the United States in payment of debts due them; and to sell and dispose of lands assigned or set off to the United States in payment of debts, or being vested in them by mortgage or other security for the payment of debts." (4 U. S. Stat., 414.)

Section 9 of the act of 1863, ch. 76, enacts "That for the purpose of realizing as much as may properly be done, from unproductive lands and other property of the United States acquired under judicial proceedings, or otherwise, in the collection of debts, the Solicitor of the Treasury be, and he is hereby, authorized, with the approval of the Secretary of the Treasury, to rent for a period not exceeding three years, or sell any such lands or other property at public sale, after advertising the time, place, and conditions of such sale for three months preceding the same in some newspaper published in the vicinity thereof, in such manner and upon such terms as may in his judgment be most advantageous to the public interests." (12 U. S. Stat., 740.)

The only questions now before the court turn upon the construction of these two statutes.

I.

Had the act of 1863 never been enacted, this sale would have been perfectly valid under the act of 1830. There the fullest power is given to the Solicitor of the Treasury "to sell and dispose of lands assigned or set off to the United States in payment of debts or being

vested in them by mortgage or other security for the payment of debts." Now, the question is, whether the act of 1863 was intended to qualify and limit the powers originally given by the act of 1830, or was it intended to confer additional powers upon the Solicitor of the Treasury?

Repeals by implication of acts are not favored, and yet if the act of 1863 has the force which the defendant contends it has in this case, it must have repealed a large part of section 1 of the act of 1830.

The principle of law, or the rule of construction recently laid down by this court on this subject, is as follows: "When there are two acts on the same subject, the rule is to give effect to both, if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates, to the extent of the repugnancy, as a repeal of the first, and even where two acts are not, in express terms repugnant, yet if the latter act covers the whole subject and embraces new provisions, plainly showing that it was intended as a substitute for the first, it will operate as a repeal of that act."

United States *vs.* Tynen, 11 Wallace, 92.

Now, the purpose of the act of 1830 was to provide for the appointment of the Solicitor of the Treasury, and to enumerate his duties. The language of the first section would indicate that there has been some word omitted just before the quotation above made. But, taking the whole section together, the object of it is not to give a power to the Solicitor of the Treasury, but to enumerate his duties; and amongst other

duties conferred upon him, is that of selling and disposing of lands in payment of debts, it being necessary that this duty should be performed by somebody. Section 9 of the act of 1863 cannot, in any sense, be considered as a substitute for the act of 1830. Its purpose is widely different. It does not pretend to enumerate any of the powers or duties of the Solicitor of the Treasury, but to authorize him to do a certain thing under certain circumstances. And it would be giving to it an effect which could hardly have been within the purpose of Congress, to make this act, which is intended to authorize him to do a certain thing, a repeal *pro tanto* of the original statute enumerating the duties of his office.

Perhaps the two statutes may be better reconciled by confining section 9 to unproductive property only, which may be done by construing the words "and other property" as *ejusdem generis* with the property first mentioned, namely, *unproductive land;* that is to say, property of an uncertain value, which it is best should be sold at public auction; and leaving the powers of the Solicitor of the Treasury, under the act of 1830, to dispose generally of the property of the United States, unaffected by the later statute.

The purpose of the section is to realize "as much as may properly be done from unproductive lands and other property;" and power is only given to "sell any *such* lands" (namely, unproductive lands) "or other property." If it were intended that this should refer to all kinds of real property, why should "unproductive lands" be twice specifically mentioned.

If the power conferred by the act of 1830 to sell this land remains unimpaired, then the recital in the deed that it was done under the act of 1863 cannot affect the validity of the sale, if the Solicitor of the Treasury had power to make it; nor would the fact that it was sold by auction, for the act of 1830 is silent as to the mode of sale.

If, however, the act of 1863 repeals the act of 1830, or qualifies it, the Solicitor of the Treasury has no longer power to sell any of the property of the United States by private sale, which cripples his power to an extent that it can be well conceived would often be very detrimental to the public.

II.

But if this sale to Jonas, in order to be sustained, must have been made in conformity with the act of 1863, then it is submitted that the court will presume the approval of the Secretary of the Treasury, and that it is not necessary that his approval should appear either in the conveyance or be matter of record in any respect.

The Solicitor of the Treasury is a public officer performing public duties, and "where acts are of an official nature, or require the concurrence of official persons, a presumption arises in favor of their due execution. In these cases the ordinary rule is *Omnia præsumuntur rite et solenniter esse acta donec probetur in contrarium.*"

Broom's Maxims, (6th Amer. ed.,) 908, 909, and cases there collected.

"The law," says Mr. Justice Story, "presumes that every man in his private and official character does his duty until the contrary is proved. * * It will presume that all things are rightly done, unless the circumstances of the case overturn this presumption. * * Thus it will presume that a man acting in a public office has been rightly appointed; that entries found in public records have been made by the proper officer, that upon proof of title, matters collateral to that title shall be deemed to have been done, as, for instance, if a grant or feoffment has been declared on, attornment will be intended, and that deeds and grants have been accepted which are manifestly for the benefit of the party."

Bank of the United States *vs.* Dandridge, 12 Wheat., 69, 70.

In that case it was decided that the acceptance of a cashier's bond by the board of directors of a bank, may be proved, without the production of written record, by the fact that the person acted as cashier, and was recognized as such by the directors, and that the bond was required to be given as a condition precedent to his so acting, and was actually among the corporate documents.

Among the cases cited by Mr. Justice Story, with approval, was that of Apthorp *vs.* North, 14 Mass., 167, where the supreme court of Massachusets held that the approval of a coroner's bond, which was required to be approved by the court of common pleas, need not appear of record.

The approval of the Secretary of the Treasury is not a muniment of title, but is a matter collateral to the

title with which the grantee of the property had nothing to do. The deed of conveyance of the Solicitor of the Treasury transferred the title of the property to Jonas, and, being made by a public officer, we submit that the deed must be presumed to have been executed with the approval of the Secretary of the Treasury. That is to say, that the question whether the Secretary of the Treasury had approved it, is a matter between the Government and the Solicitor of the Treasury, and not a thing essential in order to make title.

C. H. HILL,
Assistant Attorney General.

Supreme Court of United States.

UNITED STATES
vs.
GEORGE JONAS. } No. 227.

Brief of P. PHILLIPS,

For Defendant in Error.

S. & R. O. POLKINHORN, PRINTERS, D ST. NEAR SEVENTH.

Supreme Court of United States.

UNITED STATES
vs.
GEORGE JONAS. } No. 227.

Brief of P. PHILLIPS,

For Defendant in Error.

Certain real estate in the city of New Orleans, alleged to have been acquired by the United States in payment of a debt due to it, was advertised to be sold. When offered it was bid for by the defendant in error, and adjudicated to him. A deed for the property, signed by "Everett C. Banfield, Solicitor of the Treasury," was tendered; but the purchaser refused the title for want of evidence of the approval of the Secretary of the Treasury.

A second sale was then made, and the property was adjudicated to another person for a sum less than that of the first sale, to wit, $8,500.

For this difference the present suit was brought, and under the charge of the court a verdict was rendered for defendant. The writ of error is to the judgment on that verdict.

The bill of exceptions shows that the ground of defence was that the defendant had never been legally put in default, as it did not appear that the approval of the

Secretary was either endorsed on the act of sale by the Solicitor of the Treasury, or in any manner, in any written form, tendered to defendant before he was placed in default, and the sale at his risk was made. p. 38.

The charge of the court is to be found at p. 41, and presents the following points:

1. That to authorize a second sale so as to charge the defendant in this action, it must be shown he was legally put in default for non-compliance.

2. To do this, it was necessary to tender him a deed made by an officer who possessed undoubted authority to execute it.

Wherefore (says the judge) I charge you that unless you find that the deed executed by the Solicitor, and tendered to defendant, bore upon its face, or by means of papers connected therewith, written proof certain and patent to the defendant that the Secretary of the Treasury had, in accordance with section 9, of the act of 3d of March, 1863, approved and authorized the sale, then no such deed was tendered as the defendant was bound to accept, and he never was so put in default as to subject him to this suit. p. 42.

This was a direct answer to the proposition submitted on the part of the plaintiff below, to wit:

That the law did not require "a tender to defendant as a part of the proof of title, the written *approval*, or *consent* of the Secretary of the Treasury to said sale or transfer of said property, *in any form*, in order to convey a complete title." P. 40.

The provision for a second sale by auction is regulated by the Civil Code in Articles 2,589, 2,590, and is technically known in the civil law as the "*folle enchère.*"

By the latter article the first purchaser cannot be al-

lowed to bid at the second sale, either directly or through the intervention of a third person.

The courts of the State, while they enforce these provisions, hold the seller to the strictest compliance with the law, and will not compel the purchaser to accept a sale, where the seller has neglected the forms of law in provoking the sale, and where irregularities may throw *a doubt on the title.*

Succession of Weber, 16 An., 422. 9. An. 560

By the act 2 September, 1789, entitled "An act to establish the Treasury Department," (1 Stat., 65,) it is declared that the "Secretary of the Treasury shall be deemed the *head* of the Department," and among the duties imposed upon him is that of "superintending the collection of the revenue," and the performance of "all services relative to the finances as he shall be directed to perform." This act also provides for certain subordinate officers in this Department, to each of whom certain duties are assigned.

By the act 3d March, 1817, "To provide for the prompt settlement of public accounts," it is by the 2d section provided that all claims or demands by or against the United States as debtor or creditor shall be settled and adjusted in the Treasury Department.

The 10th section makes it the duty of the First Comptroller to superintend the recovery of all debts to the United States, and to take such measures as may be necessary to enforce prompt payment. (3 Stat., 366.)

By the act 29 May, 1830, (4 Stat., 414,) a Solicitor of the Treasury is appointed, and among the duties assigned to him by the 1st section is the charge of property conveyed to the United States in payment of debts, with power to sell and dispose of the same.

We maintain that the powers conferred on the Solic-

itor, as well as on all the other subordinate officers in the Treasury Department, are subject to the control and supervision of the Secretary, the "head of the Department," without there is a clearly expressed intent that such powers should be exercised independently.

It is the policy of the law to hold the head of the Department responsible for the due administration of the governmental functions which pertain to it.

The duties which have been assigned by several acts to Commissioners of Customs, Comptrollers, &c., are quite as explicitly conferred upon them, as those which have been vested in the Solicitor of the Treasury by the act of 1830.

The question as to the subordination of these officers to the head of the department has been frequently discussed.

An extensive review of these acts of Congress, and of the opinions of the several Attorneys General thereon is to be found in the opinion of Mr. Crittenden, (5 Vol. Opinions, 657,) wherein it is said that the independent jurisdiction "claimed by auditors, comptrollers and commissioners of customs, is, in my opinion, contrary to the true meaning of the acts of Congress, and not consistent with the spirit of the Constitution, which intends, that each of the Executive Departments shall have a head."

The opposite theory "tends to turn things upside down; to effect a total reversement of the relative duties of superior and subordinate officers, and to impede and enfeeble the due administration of the business of the department."

At p. 640 it is said: "In the statute relative to the establishment of the Treasury Department, and in all the subsequent statutes relating to it, the Secretary is deemed and looked to as the head of the department.

"In so declaring, Congress must be understood as employing the word 'head' in its signification as defined by standard writers, and as established by general use; as denoting the chief person; the person having command of the department, and to whom all the other officers of the department are subordinate."

We insist, therefore, that the important power of selling the property of the United States under the act of 1830, can only be exercised by the Solicitor with the approval of the Secretary.

But if there is any doubt as to the correctness of this proposition under the act of 1830, it is wholly removed by the subsequent act of 3 March, 1863, to "Prevent frauds on the revenue, and provide for the certain and speedy collection of claims in favor of the United States." (12 Stat., 737.)

The 9th section is as follows:

"That for the purpose of realizing as much as may be properly done, from unproductive lands, and other property of the United States, acquired under judicial proceedings, or otherwise, in the collection of debts, the Solicitor of the Treasury be, and he is hereby, authorized, *with the approval of the Secretary of the Treasury*, to rent for a period not exceeding three years, or sell, any such lands or other property at public sale, after advertising the time, place and condition of such sale for three months preceding the same, in some newspaper published in the vicinity thereof, in such manner and upon such terms as may, in his judgment, be most advantageous to the public interests."

By this act, the property can neither be sold by the Solicitor, even with the approval of the Secretary, except in the manner and on the conditions specified in the act. A public sale, mode of advertisement and length of notice are all prescribed.

The act of 1830 is silent as to all these requirements; and if the Solicitor can exercise the power under it, notwithstanding the act of 1863, he may convey by *private sale*, for whatever consideration he may deem proper, property of the greatest value. This consideration affords an additional reason for urging that this power of private sale in the Solicitor could not be exercised but by the approval of the Secretary.

By the 5th prayer the court was asked to charge, that under the act of 1863, the Solicitor of the Treasury "is the sole judge of the propriety of the sale of property thus acquired by the United States, without consulting the Secretary of the Treasury, or obtaining his approval thereof;" and further "that by the terms of said statute he is only required to act with the approval of the Secretary of the Treasury in case he seeks to *rent* such property, instead of selling the same." p. 39.

It is apparent that the act of 1863 was held by both parties as governing the case, and the question alone referred was as to its proper construction.

It is submitted that neither the grammatical arrangement of the 9th section, nor its intent, will justify the distinction attempted to be drawn between the power to rent and the power to sell. To say that Congress required the approval of the Secretary, when the property was parted with for a period limited to three years, and dispensed with that safeguard, when the property was to be disposed of forever, would be to attribute to it the grossest absurdity in legislation. This the Court will never do, except the language is so unambiguous as to leave no alternative.

The deed executed by Banfield recites, that acting in the capacity of Solicitor of the Treasury, under the 9th section of the act of 1863, he had caused the property to be exposed for sale at public auction, &c.

Having thus declared, on the face of the instrument, the authority under which he acted, it is now a vain thing to recur to the act of 1830, even if this act conferred greater power than that of 1863. p. 22.

The record exhibits another question which affects the title, but which was not made the subject of a charge to the jury, and this arises on the character of the deed through which the United States claim.

On the 15 May, 1867, Thos. P. May appears before the notary, together with John Jay Knox, and conveys to the "United States, represented by John Jay Knox, the duly appointed and authorized special agent of said United States of America, he being here also present, and in his said capacity accepting and purchasing for said United States, and their assigns, and acknowledging delivery and possession thereof, the following described property."

"The sale is made and accepted for the consideration of the sum of $50,000, payable in the manner following."

"Whereas, the said May is indebted to the United States in the sum of about one million and forty thousand dollars, the precise amount to be hereafter determined. Now, in settlement and liquidation of said price, the said agent, John J. Knox, hereby, and in his said capacity, grants the said May acquittance and discharge for so much of said price, as may enure to, or be received by the United States, after all just and legal claims, having priority to those of the United States, or special privilege on said real estate, have been allowed, or established and satisfied."

This conveyance is executed by "T. P. May, Mary May, John J. Knox." p. 16.

What is the legal character of this deed?

It cannot be treated as a *purchase* by the United States. If it were, then the title wholly fails; for by the act of 1 of May, 1820, (3 Stat. 568,) it is enacted "that no land shall be purchased on account of the United States, except under a law authorizing such purchase."

In Neilson *v.* Lagou, where this statute was discussed, it received such a construction as to enable the Government to receive a conveyance of land without regard to its form, *as security for a debt.*

Thus all the power necessary for the collection of debts is preserved to the Government, while the evils against which the act of 1820 was directed are avoided.

Deeds absolute on their face are constantly construed by the courts as mortgages while the facts show they were so intended to operate.

If then the deed of May was but a security for the debt due to him, the conveyance by Banfield, unaided by May, did not confer on the purchaser such a marketable title free from doubt as the law would compel him to take.

But again, it would appear from the execution of the deed that the title to the property was vested in Knox to be held in trust for the United States. May and Knox are the parties who appear before the notary, and in their names the instrument is executed.

We submit, that the refusal of the instructions asked for was correct, and that the judgment must be affirmed.

P. PHILLIPS,

For Defendant in Error.